

REVISED AGENDA —October 24, 2001 Business Taxes Committee Meeting
Regulation 1603, *Taxable Sales of Food Products*

<p>Action 1 — Consent Item(s)</p> <p>Proposed revision to Regulation 1603, <i>Taxable Sales of Food Products</i>.</p> <p>Exhibit 2, pages 1-4, 8, 11, 17-19.</p>	<p>Adopt proposed amendments as agreed upon by interested parties and staff.</p> <ol style="list-style-type: none"> 1) Incorporate non-substantive grammatical changes in subdivisions (a)(1)(C)1., and 2.; (a)(2)(A); (c)(2)(A)1., and 2.; (e)(1); (h)(1); and (k)(3). 2) Add language to clarify when a resale certificate may be accepted for the sale of meals or hot prepared food products: subdivision (a)(2)(A). 3) Clarify the definition of caterer to add the words “or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer,” in subdivision (h)(1). 4) Clarify application of tax to sales by caterers when caterers are lessors of property unrelated to the serving or furnishing of meals, food, or drinks: subdivision (h)(3)(B). 5) Clarify application of tax to sales of meals by caterers to social clubs and fraternal organizations. Amend and move last paragraph of subdivision (h) to subdivision (h)(3)(D). 6) Clarify application of tax to tips, gratuities, and service charges: subdivision (h)(3)(E). 7) Clarify application of tax to transactions by private chefs who are caterers: subdivision (h)(5). 8) Clarify application of tax to sales of student meals by caterers: subdivision (j)(2)(D). 9) Correct the omission in the California Code of Regulations noted with regard to subdivision (m) by incorporating the 1989 regulatory language which stated, “Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of the institution.” 10) Incorporate Annotation 550.0270 “Honor System Snack Sales” into the regulation, in subdivision (t).
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**Action 2 — Sales to Caterers – Proposed Subdivision
(h)(2)(A) &(h)(2)(B)**

Exhibit 2, page 4-6.

Adopt either:

- 1) Staff's recommendation to clarify that caterers are generally the consumers of property related to the furnishing and serving of meals, food, or drinks, except for tangible personal property regarded as being sold with meals, food or drinks, such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks in subdivision (h)(2)(A); and further, caterers are considered the lessors of tangible personal property when that property is unrelated to the serving or furnishing of meals, food, or drinks, in subdivision (h)(2)(B),

OR

- 2) MPAA's proposal that caterers are generally considered the consumers of tangible personal property normally used in furnishing and serving meals, food or drinks except for separately stated charges for the leases of tangible personal property, or tangible personal property regarded as being sold with meals food or drinks, such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks.

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<p>Action 3 — Sales by Caterers – Proposed Subdivision (h)(3)(A) Exhibit 2, page 7 & 8</p>	<p>Adopt either:</p> <ol style="list-style-type: none">1) Staff's recommendation to clarify that caterers are the retailers of tangible personal property used in connection with serving meals, food, or drinks. The charges made by the caterer for items such as tents, canopies, subflooring, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks, are included in the caterer's taxable gross receipts irrespective of the method of billing. Caterers are considered the lessors of tangible personal property when that property is unrelated to the serving or furnishing meals, food, or drinks, <p style="text-align: center;">OR</p> <ol style="list-style-type: none">2) MPAA's proposal to add to the current regulatory language (which states that tax applies to the entire charges made by caterers for serving meals, food and drinks) that a caterer who separately states or itemizes charges for the lease of tangible personal property, regardless of the use of the property, will be deemed to be the lessor of such property. Tax applies in accordance to Regulation 1660.
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<p>Action 4 – Caterers Planning, Designing, and Coordinating Events - Proposed Subdivision (h)(3)(C)</p> <p>Exhibit 2, pages 9 & 10</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> 1) Staff's recommendation to clarify that tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, or to meals sold to event planners who are selling on their own account. <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 2) MPAA's proposal to add to staffs recommended language that an event planner's separately stated fee for services not related to a taxable sale is not subject to tax.
<p>Action 5 – Premises not Supplied by the Customer – Proposed Subdivision (h)(4)</p> <p>Exhibit 2, Pages 12 & 16</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> 1) Staff's recommendation that the charges to the customer for the premises are part of the charges for the service of the meals, food, or drinks, and are included in the person's taxable gross receipts without regard to whether the charges are separately stated, except when: <ol style="list-style-type: none"> A. The event's primary purpose is other than the sale of food or drinks, or B. The consumption of the meals, food, or drinks, is an incidental part of other significant uses of the premises, by a specific customer or by all persons who use the premises, or C. Food is served during transportation, <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 2) MPAA's proposal to provide that the separately stated rental charge for the facility is not subject to tax, when the premises are primarily used (functionally used in general) for purposes other than serving meals, food, or drinks.

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Action 6 — Authorization to Publish Exhibit 2	Recommend the publication of the proposed amendments to Regulation 1603, <i>Taxable Sales of Food Products</i> , as adopted in the above actions. Operative Date: None Implementation: 30 days following OAL approval
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Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 — Consent Items</p> <p>(1) Non-substantive grammatical change in subdivision (a)(1)(C)1. and 2.</p> <p>(2) Clarify when a resale certificate may be accepted for the sale of meals or hot prepared food products in subdivision (a)(2)(A).</p>	<p>Regulation 1603. TAXABLE SALES OF FOOD PRODUCTS</p> <p>(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS.</p> <p>(1) DEFINITIONS.</p> <p>(C) Complimentary Food and Beverages. As used in this subdivision (a), the term “complimentary food and beverages” means food and beverages (including alcoholic and non-alcoholic beverages) which are provided to transient guests on a complimentary basis and:</p> <ol style="list-style-type: none"> 1. There is no segregation between the charges for rooms and the charges for the food and beverages on the guests’ bills, and 2. The guests are not given an option to refuse the food and beverages in return for a discounted room rental. <p>(2) APPLICATION OF TAX.</p> <p>(A) In General. Tax applies to sales of meals or hot prepared food products (see (e) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments whether served on or off the premises. In the case of American Plan hotels, special packages offered by hotels, e.g., a New Year’s Eve package as described in subdivision (a)(1)(E), and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for the meals, hot prepared food products, and beverages. Charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (h) below.) <u>Sales of meals or hot prepared food products by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments to persons such as event planners, party coordinators, or fundraisers, which buy and sell on their own account, are sales for resale for which a resale certificate may be accepted (see subdivision (h)(3)(C)(2)).</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p>(1) Non-substantive grammatical change in subdivision (a)(2)(A).</p> <p>(1) Non-substantive grammatical change in subdivision (c)(2)(A)1. and 2.</p> <p>(1) Non-substantive grammatical change in subdivision (e)(1).</p> <p>(3) Definition of caterers.</p>	<p>SouffleSoufflé cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.</p> <p>(c) COLD FOOD SOLD ON A “TAKE-OUT” ORDER.</p> <p>(2) DEFINITIONS.</p> <p>(A) For purposes of this subdivision (c), the term “suitable for consumption on the seller’s premises” means food products furnished:</p> <p>1. In a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and</p> <p>2. In a size which ordinarily may be immediately consumed by one person such as a large milk shake, a pint of ice cream, a pint of milk, or a slice of pie. Cold food products (excluding milk shakes and similar milk products) furnished in containers larger in size than a pint are considered to be in a form not suitable for immediate consumption.</p> <p>(e) HOT PREPARED FOOD PRODUCTS.</p> <p>(1) GENERAL. Tax applies to all sales of hot prepared food products unless otherwise exempt. Hot soup, bouillon, or consomme <u>consommé</u> is a hot prepared food product, which is not a beverage.</p> <p>(h) CATERERS.</p> <p>(1) DEFINITION. The term “caterer” as used in this regulation means a person engaged in the business of serving meals, food, and <u>or</u> drinks on the premises of the customers, <u>or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer,</u> but does not include employees hired by the <u>customer by the</u> hour or day.</p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p>(4) Application of tax regarding caterers as lessors in subdivision (h)(3)(B)</p> <p>(5) Application of tax to sales of meals by caterers to social clubs, and fraternal organizations in subdivision (h)(3)(D).</p> <p>(6) Application of tax to tips, gratuities, and service charges in subdivision (h)(3)(E).</p>	<p>(3) SALES BY CATERERS.</p> <p><u>(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.</u></p> <p>1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of food or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.</p> <p>2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, linen, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.</p> <p><u>(D) Sales of Meals by Caterers to Social Clubs, Fraternal Organizations.</u> Sales of meals to social clubs and fraternal organizations, as those terms are defined in subdivision (i) below, by caterers are sales for resale if such social clubs and fraternal organizations are the retailers of the meals subject to tax under subdivision (i) and give valid resale certificates therefor.</p> <p><u>(E) Tips, Gratuities, or Service Charges:</u> An optional tip or gratuity is not subject to tax. A mandatory tip, gratuity, or service charge is included in taxable gross receipts. A tip, gratuity, or service charge negotiated in advance of an event between the caterer and the customer is mandatory even though the amount or percentage is negotiated. A tip, gratuity, or service charge itemized on an invoice or billing by a caterer is not optional even if the invoice or billing itemizes with a notation such as "optional gratuity." A gratuity is optional only if it is voluntarily added by the customer. Examples of mandatory tips, gratuities, or service charges include:</p> <p style="padding-left: 40px;"><u>"A 15% gratuity [or service charge] will be added to parties of 8 or more."</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p>(7) Application of tax to transactions by private chefs who are caterers in subdivision (h)(5).</p> <p>(8) Application of tax to sales of student meals by caterers in subdivision (j)(2).</p> <p>(1) Non-substantive change in subdivision (k)(3)</p> <p>(9) To correct omission regarding sales of meals by institutions in subdivision (m)</p>	<p><u>"Suggested gratuity 15%," itemized on the invoice or bill by the caterer.</u></p> <p><u>Tips, gratuities, and service charges are further discussed in subdivision (g).</u></p> <p><u>(5) PRIVATE CHEFS.</u></p> <p><u>A private chef is generally not an employee of the customer, but an independent contractor who pays his or her own social security, federal and state income taxes. Such a private chef, who prepares and serves meals, food and drinks in the home of his or her customer is a caterer under this regulation.</u></p> <p>(j) STUDENT MEALS.</p> <p>(2) APPLICATION OF TAX.</p> <p><u>(D) Sales by Caterers.</u> The application of tax to sales by caterers in general is explained in subdivision (h) above. However, tax does not apply to the sale by caterers of meals or food products for human consumption to students of a school, if all the following criteria are met:</p> <p><u>(1) The premises used by the caterer to serve the lunches to the students are used by the school for other purposes, such as sporting events and other school activities, during the remainder of the day;</u></p> <p><u>(2) The fixtures and equipment used by the caterer are owned and maintained by the school; and</u></p> <p><u>(3) The students purchasing the meals cannot distinguish the caterer from the employees of the school.</u></p> <p>(k) EMPLOYEES' MEALS.</p> <p>(3) NO SPECIFIC CHARGE. If no specific charge is made by an employer <u>makes no specific charge</u> for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals.</p> <p>(m) INSTITUTIONS.</p> <p>Tax does not apply to the sale of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients or and residents of an "institution" as defined in Regulation 1503. <u>Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of the institution.</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
(10) Incorporate Annotation 550.0270 into the regulation in subdivision (t)	<u>(t) HONOR SYSTEM SNACK SALES. An “honor system snack sale” means a system where customers take snacks from a box or tray and pay by depositing money in a container provided by the seller. Snacks sold through such a system may be subject to tax depending upon where the sale takes place. Sales of such snacks are taxable when sold at or near a lunchroom, break room, or other facility that provides tables and chairs, and it is contemplated that the food sold will normally be consumed at such facilities. Honor system snack sales do not include hotel room mini-bars or snack baskets.</u>

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Action Item	Staff's Proposed Language	Industry's Proposed Language
<p>Action 2 — Sales to Caterers – Proposed Subdivision (h)(2)(A)</p> <p>Clarify that caterers are generally the consumers of property related to the furnishing and serving of meals, food, or drinks, except for tangible personal property regarded as being sold with meals, food or drinks, such as disposable plates, napkins, etc. Further, clarify that caterers are considered the lessors of tangible personal property when that property is unrelated to the serving or furnishing of meals, food, or drinks.</p>	<p><u>(2) SALES TO CATERERS.</u></p> <p><u>(A) Caterer as Consumer of Property Related to the Furnishing and Serving of Meals, Food, or Drinks.</u> A caterer generally is considered the consumer of tangible personal property such as tables, chairs, glasses, silverware, dishes, linens, etc. used in connection with the furnishing and serving of meals, food, or drinks, except for tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks. The caterer is also the consumer of additional tangible personal property such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, electrical fixtures, as well as the labor to install and remove such items, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks. As the consumer, a caterer may not issue a resale certificate for the purchase or lease of such property used in connection with the serving of meals, food, or drinks because the caterer is the consumer of the property and, thus, neither sells nor rents such items to his or her customer irrespective of the method of billing. Rather, the sale or lease, unless the purchase of that leased property is excluded by Regulation 1660(b)(1)(E), of such property to a caterer is subject to sales or use tax.</p>	<p><u>(2) SALES TO CATERERS.</u></p> <p>A caterer generally is considered to be the consumer of tangible personal property normally used in the furnishing and serving of meals, food or drinks, except for separately stated charges by the caterer for the lease of tangible personal property or tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks.</p>

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Action Item	Staff's Proposed Language	Industry's Proposed Language
	<p><u>(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.</u></p> <p><u>1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of meals, food, or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.</u></p> <p><u>2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.</u></p>	

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Action Item	Staff's Proposed Language	Industry's Proposed Language
<p>Action 3 — Sales by Caterers – Proposed Subdivision (h)(3)(A)</p> <p>Clarify that caterers are the retailers of meals, food, or drinks and that tax applies to the charges made to customers for the meals, food, and drinks, and for other TPP and services used and provided in connection with serving meals, food, or drinks. Further, caterers are considered the lessors of tangible personal property when that property is unrelated to the serving or furnishing meals, food, or drinks.</p>	<p><u>(3) SALES BY CATERERS.</u></p> <p><u>(A) Caterer as Retailer.</u> Tax applies to the entire charges made by a caterers for the serving of meals, food, or drinks, inclusive of charges for food, the use of dishes, silverware, glasses, plasticware, paper products, chairs, tables, linens, champagne fountains, ice-sculptures, table décor, invitations, menus, etc., which are used in connection with serving meals, and for the labor of planning, preparing, and serving the meals, food, or drinks whether performed by the caterer, the caterer's employees, or subcontractors (e.g., bartenders, wait staff and cooks). Charges made by the caterer for items such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, electrical fixtures as well as the labor to install and remove such items, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks, are included in the caterer's taxable gross receipts irrespective of the method of billing. Charges for hourly employees, associated with the furnishing of the meals, hired by a caterer are included in the caterer's gross receipts and subject to tax. Tax also applies to charges made by a caterer for preparing and serving meals, food, or drinks even though the food is not provided by the caterers, such as the cutting of a wedding cake or corkage fees associated with the opening of beverages. Tax applies to charges made by a person who is otherwise a caterer for hot prepared food products as in (e) above whether or not served by that person or caterer.</p>	<p><u>(3) SALES BY CATERERS.</u></p> <p><u>(A) Caterer as Retailer.</u> Tax applies to the entire charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer's employees or subcontractors. Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers.</p> <p>Tax applies to charges made by caterers for hot prepared food products as in (e) above whether or not served by the caterers. <u>A caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property will be deemed to be the lessor of such property. Tax applies in accordance to Regulation 1660 Leases of Tangible Personal Property – In General.</u> Tax does not apply to charges made by caterers for the rental of dishes, silverware, glasses, etc., purchased by the caterer with</p>

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Action Item	Staff's Proposed Language	Industry's Proposed Language
<p>Action 4 – Caterers Planning, Designing, and Coordinating Events - Proposed Subdivision (h)(3)(C)</p> <p>Clarify that tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks.</p>	<p><u>(C) Caterers Planning, Designing and Coordinating Events.</u></p> <p><u>1. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g., coat-check clerks, parking attendants, security guards, etc.</u></p> <p><u>2. When a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668. A person is buying or selling for his or her own account, or own sake, when such person has his or her own contract with a customer to sell the meals, food, or drinks to the customer, and is not merely acting on behalf of the caterer.</u></p>	<p>tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental</p> <p><u>(C) Caterers Planning, Designing and Coordinating Events.</u></p> <p><u>1. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g., coat-check clerks, parking attendants, security guards, etc.</u></p> <p><u>2. When a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668. A person is buying or selling for his or her own account, or own sake, when such person has his or her own contract with a customer to sell the meals, food, or drinks to the customer, and is not merely acting on behalf of the caterer.</u></p> <p><u>When a caterer sells meals, food or drinks and the serving of them to other persons who charge a fee for their service unrelated to the taxable sale, the separately stated fee is not subject to tax.</u></p>

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Action Item	Staff's Proposed Language	Industry's Proposed Language
<p>Action 5 – Premises not Supplied by the Customer – Proposed Subdivision (h)(4)</p> <p>Charges to the customer for the premises are part of the charges for the service of the meals, food, or drinks, and are included in the person's taxable gross receipts without regard to whether the charges are separately stated, except when: The event's primary purpose is other than the sale of food or drinks, or the consumption of the meals, food, or drinks is an incidental part of other significant uses of the premises by a specific customer or by all persons who</p>	<p><u>(4) PREMISES NOT SUPPLIED BY THE CUSTOMER.</u></p> <p><u>(A) General.</u> When a person serves meals, food, or drinks on premises not supplied by the customer, that person is not a caterer as defined in subdivision (h)(1), without regard to whether the premises supplied to the customer are owned or leased by that person for his or her own general use, or the premises are rented or leased by that person for the specific job. Except as provided in subdivisions (h)(4)(B), (C), and (D) below, when a person serves meals, food, or drinks on premises that the person supplies, the charges to the customer for the premises are part of the charges for the service of the meals, food, or drinks, and are included in the person's taxable gross receipts from the sale of meals, food, or drinks without regard to whether the charges are separately stated.</p> <p><u>(B) Event's Primary Purpose Is Not Providing Food, or Drinks.</u> When a person serves food or drinks on premises that person supplies, charges for the premises are included in taxable gross receipts from the sale of the food or drinks, unless:</p> <p>1. The premises are supplied for an event, such as awards ceremony, press conference, concert, fundraiser, or a dance, where the primary purpose of the event is other than the providing of food or drinks, and</p> <p>2. The food or drinks provided at the event are solely drinks and/or hors d'oeuvres or appetizers.</p> <p><u>If the above conditions are met, the charges to the customer for the premises are not taxable as part of the gross receipts from the sale of the food and/or drinks.</u></p>	<p><u>(4) PREMISES NOT SUPPLIED BY THE CUSTOMER.</u></p> <p><u>General.</u> Food, meals, or drinks are sometimes served on premises not supplied by the customer. In such circumstances, the person serving the food, meals, or drinks is not a caterer as defined in subdivision (h)(1). When meals, food, or drinks are served on premises supplied by a person who is otherwise a caterer and the premises are primarily used for the purpose of serving meals, food, or drinks, the charge for the rental of the premises is included in the taxable gross receipts without regard to whether that charge is separately stated. However, when the premises are not primarily used for the purpose of serving meals, food, or drinks, the separately stated rental charge for such facility is not included in the gross receipts subject to tax. The separately stated rental charge should reflect a reasonable fair market rental value for such premises. "Primarily used" means the principle or functional use of the premises is normally for a business, entertainment, or recreational activity unrelated to the serving of meals, food, or drinks.</p> <p><u>Examples of premises not primarily used for the purpose of serving meals, food, or drinks are, including but not limited to, museums, circuses, aquariums, zoos, amusement parks, stadiums, parks, theaters, amphitheaters, studio stages, studio sets, studio facades, outdoor entertainment districts and other studio properties</u></p>

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Action Item	Staff's Proposed Language	Industry's Proposed Language
use the premises, or Food is served during transportation,	<u>but the charges for the food and/or drinks and related services are subject to tax.</u>	
	<p><u>(C) Meal, Food, or Drinks as an Incidental Part of Other Significant Uses of Premises by Customers.</u></p> <p><u>1. Room in Hotels, Restaurants, Fraternal Lodges, and Similar Facilities. Charges by a restaurant, hotel, fraternal lodge, or a similar facility for the use of a room as part of the service of meals, food, or drinks are included in taxable gross receipts from the sale of the meals food, or drinks. However, when daily room charges are made and meals, food, or drinks are served at some point during the day as an incidental part of other significant uses of the same room by the customer, such as business meetings, seminars, and similar functions, separately stated room charges are not taxable as part of the gross receipts from the sale of meals, food, or drinks, but the charges for the meals, food, or drinks and related services are subject to tax. If meals, food, or drinks are served in a different room from the room(s) used for the function, the charges for that room are included in taxable gross receipts from the sale of meals, food or drinks.</u></p> <p><u>2. Other Premises. Charges for the use of premises other than those described in subdivision (h)(4)(C) 1., supplied by a person who also serves meals, food, or drinks thereon, are included in taxable gross receipts from the sale of meals, food, or drinks, unless all of the following conditions are met:</u></p> <p><u>a. The primary use of the premises on a daily basis is for other than the serving and eating of meals, food,</u></p>	

REVISED AGENDA —October 24, 2001 Business Taxes Committee Meeting
Regulation 1603, *Taxable Sales of Food Products*

Action Item	Staff's Proposed Language	Industry's Proposed Language
	<p><u>or drinks;</u></p> <p><u>b. The premises may be rented without any meals, food, or drinks being provided;</u></p>	
	<p><u>c. The charges for the premises are the same amount whether or not meals, food, or drinks are provided,</u></p> <p><u>d. The charges for the premises are separately stated in the contract; and</u></p> <p><u>e. The person's provision of meals, food, or drinks to the customer is only an incidental part of the customer's other significant uses of the premises.</u></p> <p><u>Examples of premises where the meals, food, or drinks may be incidental to other significant uses of the premises by the customer include, but are not limited to, museums, amusement parks, permanent life-size replicas of neighborhood or city street scenes at theme parks and motion picture studios, circuses, aquariums, and zoos.</u></p> <p><u>However, if such premises are provided for only the amount of time sufficient for the serving and eating of the meals, food, or drinks, such use of the premises by the customer is not an incidental part of other significant uses and the charges for the premises are part of the charges for the providing of meals, food, or drinks and, thus, are included in the taxable gross receipts from the sale of meals, food, or drinks.</u></p>	

REVISED AGENDA —October 24, 2001 Business Taxes Committee Meeting
Regulation 1603, *Taxable Sales of Food Products*

Action Item	Staff's Proposed Language	Industry's Proposed Language
	<p><u>D) When Food Served During Transportation.</u> <u>When meals, food, or drinks are provided during transportation, such as on a vessel or bus, the usual charges for transportation are not taxable as part of the gross receipts from the sale of the meals, food, or drinks. However, if the premises on which the meals, food, or drinks are provided are not at that time being used to transport the persons to whom the meals, food, (or drinks are being provided, such as a vessel that remains moored, the charges for the use of those premises in connection with the serving of meals, food, or drinks are included in taxable gross receipts from the sale of the meals, food, or drinks.</u></p>	

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- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

REVISED 10-19-01

PROPOSED REGULATORY CHANGES REGARDING CATERERS UNDER REGULATION 1603 TAXABLE SALES OF FOOD PRODUCTS.

I. Issue

Should Regulation 1603, *Taxable Sales of Food Products*, be amended to clarify the application of tax with respect to sales made by and to caterers?

II. Staff Recommendation

Staff recommends adoption of the proposed amendments to Regulation 1603, as shown in Exhibit 3, including:

- Caterers are the consumers of the property they use in connection with furnishing and serving meals, food or drinks, except for tangible personal property regarded as being sold with meals, food or drinks, such as disposable plates napkins etc. [(h)(2)(A)]
- The entire charge made by caterers for serving meals, food or drinks is subject to tax. [(h)(3)(A)]
- Caterers are lessors of tangible personal property not related to the furnishing and serving of meals. [(h)(3)(B)]
- Meals sold to persons such as event planners who are selling on their own account are sales for resale. [(h)(3)(C)]
- Charges for premises are exempt when the event's primary purpose is other than the sale of food or drinks, or when the consumption of the meals, food, or drinks is an incidental part of other significant uses of the premises. [(h)(4)]
- Incorporate Memorandum Opinion addressing sales made by caterers for student meals. [(j)(2)(D)]
- Incorporate Annotation 550.0270, addressing sales of snacks through the "honor system." [(t)]

Staff recommends no operative date.

III. Other Alternative(s) Considered

As proposed by: The Motion Picture Association of America; Viacom; The Law Firm of Nielsen, Merksamer, Parinello, Mueller & Naylor; and Deloitte and Touche, (herein referred to collectively as MPAA) adopt staff's recommendation except amend the following subdivisions:

- In subdivision (h)(2), state that caterers are generally considered the consumers of tangible personal property normally used in furnishing and serving meals, food or drinks except for separately stated charges for the leases of tangible personal property, or for items regarded as sold with meals, food or drinks, such as disposable plates, napkins, etc.
- In subdivision (h)(3)(A), state that a caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property will be deemed to be the lessor of such property. Tax applies in accordance to Regulation 1660.
- In subdivision (h)(3)(C)2., provide that when event planners charge a fee for their service unrelated to a taxable sale, the separately stated fee is not subject to tax.
- In subdivision (h)(4), provide that when the premises are *primarily used* for purposes other than serving meals, food, or drinks, the separately stated rental charge for the facility is not subject to tax.

The alternative has no operative date. Exhibit 2 is a comparison of staff's and MPAA's proposed amendments.

FORMAL ISSUE PAPERIssue Paper Number 01 - 032**IV. Background**

Regulation 1603, last amended in September 1998, provides for the application of tax to sales of food products under certain conditions and by specific establishments. Regulation 1603(h) interprets, implements and makes specific Revenue and Taxation Code (RTC) section 6359(d) with regard to sales made by caterers. A caterer is defined in subdivision (h) of Regulation 1603 as “a person engaged in the business of serving meals, food and drinks on the premises of the customer but does not include employees hired by the hour or day.”

Currently, the regulation does not provide comprehensive information on the application of tax to the variety of charges for sales and services that caterers provide to their customers along with the sale of meals, food and drinks. Staff proposes to clarify Regulation 1603.

During the course of an April 2001 hearing, the Board Members asked staff to consider addressing in a regulation the application of tax to sales made through the honor system. Currently, the application of tax to such sales is addressed in Sales and Use Tax Annotation 550.0270. In September 1993, a taxpayer requested an opinion regarding the application of sales tax to snack tray sales of food through the “honor system,” a system whereby customers take snacks from a box or tray and pay for the snacks by depositing money in a container the seller provides. On September 22, 1993, the Board’s Legal Division responded to the taxpayer’s letter and issued an opinion regarding the application of tax to this type of sale. This opinion was summarized in published Annotation 550.0270, which is discussed under the current application of tax, below. Staff proposes to incorporate this annotation into Regulation 1603.

Interested parties meetings were held on July 3, 2001, and on August 21, 2001, to discuss the proposed revisions to Regulation 1603 regarding the application of tax with respect to charges made by and to caterers.

Current Application of Tax

In regard to sales by caterers, Regulation 1603(h) currently states:

CATERER. The term “caterer” as used in this regulation means a person engaged in the business of serving meals, food, and drinks on the premises of the customers, but does not include employees hired by the hour or day.

Tax applies to the entire charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer’s employees or subcontractors. Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers. Tax applies to charges made by caterers for hot prepared food products as in (e) above whether or not served by the caterers. Tax does not apply to charges made by caterers for the rental of dishes, silverware, glasses, etc. purchased by the caterer with tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental.

Sales of meals by caterers to social clubs, fraternal organizations or other persons are sales for resale if such social clubs, fraternal organizations or other persons are the retailers of the meals subject to tax under (i) below and give valid resale certificates therefor.

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In regard to sales through the “honor system,” Annotation 550.0270 currently states:

A taxpayer requested an opinion regarding the application of sales tax to sales of snack foods through the honor system.

It is assumed that by “honor system,” the taxpayer means a system whereby customers take snacks from a box or tray and pay for the snacks by depositing money in a container the seller provides. Snack trays share common characteristics with vending machines. Both are unattended and the transaction is completed when the customer places money in a slot or other opening. However, the plain meaning of “vending machine” does not include trays or nonmechanical open boxes. Thus, the snack tray is more like a snack bar or a snack cart which can also be unattended.

Snacks sold through an honor tray may be taxable, depending on where the sales take place. Sales of snacks are taxable when sold at or near a lunch room, break room, or other facility which provides tableware or provides tables, chairs, or dishes and it is contemplated that the food sold through the snack tray will normally be consumed at such facilities.

Concerns of Local Jurisdictions

The League of California Cities, the City of San Luis Obispo, and the City of Fremont are in support of staff’s proposed amendments to the regulation. They are concerned, however, that if certain elements that are currently included as taxable are removed from the calculation of gross receipts, as some interested parties propose, there would be a state and local revenue loss. Specifically, the League of California Cities and the City of Fremont are concerned that continued exceptions to the gross receipts principle will set the stage for other requests. Cities continue to suffer from property tax shifts and economic downturn, which reduce the local jurisdictions’ discretionary revenue. Moreover, on average, 60% of discretionary revenues are spent on public safety purposes. Any loss of sales tax revenue will impact the local jurisdictions’ ability to deliver these vital services. It is also possible that changes to this regulation, as suggested by some interested parties, may set a precedent for others in the food industry, such as restaurants and hotels, who may see these proposed changes as a competitive advantage for others. If the cost of linens and table and room rentals are removed from the gross receipts of a catered event, restaurants may also seek to exempt their commensurate portion of overhead from sales taxes.

Staff believes that the proposed amendments regarding the application of tax to caterers is not a substantial change from the current tax treatment. Therefore, the revenue loss from staff’s proposed amendments to this regulation is not anticipated to be material. However, if the alternatives proposed by industry are adopted, the revenue loss to the local jurisdictions would be greater (see Revenue Estimate Exhibit 1).

FORMAL ISSUE PAPERIssue Paper Number 01 - 032**V. Staff Recommendation****A. Description of the Staff Recommendation**Caterers as Consumers and as Retailers

Under staff's proposed revision, in subdivision (h)(2)(A), a caterer remains the consumer of tangible personal property such as tables, chairs, glasses, silverware, dishes, linens, etc. used in connection with the furnishing and serving of meals, food, or drinks, except for tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks. In subdivision (h)(3)(A), caterers are considered retailers and tax applies to the entire charge made by a caterer for the serving of meals, food, or drinks, inclusive of charges for food, the use of dishes, silverware, glasses, plasticware, paper products, chairs, tables, linens, champagne fountains, ice-sculptures, table décor, invitations, menus, etc., which are used in connection with serving meals, and for the labor of planning, preparing, and serving the meals, food, or drinks whether performed by the caterer, the caterer's employees, or subcontractors (e.g., bartenders, wait staff and cooks). Charges made by the caterer for items such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, and electrical fixtures, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks, as well as the labor to install and remove such items, are included in the caterer's taxable gross receipts irrespective of the method of billing. Charges for hourly employees associated with the furnishing of the meals and hired by a caterer, are included in the caterer's gross receipts and subject to tax. Tax also applies to charges made by a caterer for preparing and serving meals, food, or drinks, even though the food is not provided by the caterers, such as the cutting of a wedding cake or corkage fees associated with the opening of beverages.

Caterers as Lessors

Staff proposes, in subdivision (h)(2)(B) and (3)(B), to clarify the application of tax to sales to and by caterers when they are considered the lessors of property unrelated to the serving or furnishing of meals, food, or drinks. Tax applies to the lease to and by caterers in accordance with Regulation 1660, *Leases of Tangible Personal Property*, as follows:

1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of meals, food, or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property to his or her customer.
2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, linens, silverware and glasses, etc., for purposes of providing it to his or her customers, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property.

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Staff believes that its proposed amendments under subdivision (h)(2)(A),(B) and (3)(A)(B) properly address circumstances when charges for certain tangible personal property are subject to tax and when they are not. Staff believes that a separate statement of charges should not be the determining factor as to whether charges for these items should or should not be subject to tax. Rather, staff believes that whether the charges are taxable, it is dependent on whether the caterer is considered the consumer or the retailer of such items, and whether charges to the customer are connected to the sale of meals, food, or drinks.

Caterers Planning, Designing and Coordinating Events

In subdivision (h)(3)(C)1. & 2., staff proposes to clarify, in general, the application of tax when caterers plan, design and coordinate events. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if the charges are made in connection with the furnishing of meals, food, or drinks for the event. However, tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, (e.g., coat-check clerks, parking attendants, security guards, etc).

Also, when a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668, *Resale Certificates*.

Moreover, in subdivision (a)(2)(A), staff proposes to clarify, in general, that sales of meals or hot prepared food products by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments to persons such as event planners, party coordinators, or fundraisers, which buy and sell on their own account, are sales for resale for which a resale certificate may be accepted.

Staff does not recommend an expansion of the regulation at this time to deal with the industry of event planners, designers and coordinators, except as to those persons who are caterers and also provide such services. Staff was directed by the Board to clarify the regulation in regard to how tax applies to caterers. The amendments proposed by Staff address this issue. Staff believes that a separate review of the event planner, designer, and coordinator industry would be necessary in order to look at this growing industry in depth and to propose regulatory language specific to that industry.

FORMAL ISSUE PAPERIssue Paper Number 01 - 032Premises Not Supplied by the Customer

In subdivision (h)(4)(A) through (D), staff proposes to clarify the application of tax to circumstances when the customer does not supply the premises. In subdivision (h)(4)(A), in general, when a person serves meals, food, or drinks on premises not supplied by the customer, that person is not a caterer as defined in subdivision (h)(1), without regard to whether the premises supplied to the customer are owned or leased by that person for his or her own general use, or the premises are rented or leased by that person for the specific job. Except as provided in subdivisions (h)(4)(B), (C), and (D), when a person serves meals, food, or drinks on premises that the person supplies, the charges to the customer for the premises are part of the charges for the service of the meals, food, or drinks, and are included in the person's taxable gross receipts from the sale of meals, food, or drinks, without regard to whether the charges are separately stated.

Further, under subdivision (h)(4)(B) staff proposes to clarify the application of tax to circumstances when the event's primary purpose is not providing food or drinks. When a person serves food or drinks on premises supplied by that person, the charges for the premises are included in taxable gross receipts from the sale of the food or drinks, unless:

1. The premises are supplied for an event, such as an awards ceremony, press conference, concert, fundraiser, or dance, where the primary purpose of the event is other than the providing of food or drinks, and
2. The food or drinks provided at the event are solely drinks and/or hors d'oeuvres or appetizers.

If the above conditions are met, the charges to the customer for the premises are not taxable as part of the gross receipts from the sale of the food and/or drinks, but the charges for the food and/or drinks and related services are subject to tax.

In addition, under subdivision (h)(4)(C), staff proposes to clarify the application of tax when meals, food, or drinks are an incidental part of other significant uses of the premises by the customers. In subdivision (h)(4)(C)1., charges by a restaurant, hotel, fraternal lodge, or a similar facility for the use of a room as part of the service of meals, food, or drinks are included in taxable gross receipts from the sale of the meals, food, or drinks. However, when daily room charges are made and meals, food, or drinks are served at some point during the day as an incidental part of other significant uses of the same room by the customer, such as business meetings, seminars, and similar functions, separately stated room charges are not taxable as part of the gross receipts from the sale of meals, food, or drinks, but the charges for the meals, food, or drinks and related services are subject to tax. If meals, food, or drinks are served in a different room from the room(s) used for the function, the charges for that room are included in taxable gross receipts from the sale of the meals, food or drinks.

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In situations where premises other than those described in subdivision (h)(4)(C)1. are supplied by a person who also serves meals, food, or drinks on those premises, the charges for the premises are included in taxable gross receipts from the sale of meals, food, or drinks, unless all of the following conditions are met:

- a. The primary use of the premises on a daily basis is for other than the serving and eating of meals, food, or drinks;
- b. The premises may be rented without any meals, food, or drinks being provided;
- c. The charges for the premises are the same amount whether or not meals, food, or drinks are provided,
- d. The charges for the premises are separately stated in the contract; and
- e. The person's provision of meals, food, or drinks to the customer is only an incidental part of the customer's other significant uses of the premises.

Daily basis is determined based upon the use of the premises over a period of time such as six months to a year. Examples of premises where the meals, food, or drinks may be incidental to other significant uses of the premises include, but are not limited to, museums, amusement parks, permanent life-size replicas of neighborhood or city street scenes at theme parks and motion picture studios, circuses, aquariums, and zoos. However, if such premises are provided for only the amount of time sufficient for the serving and eating of the meals, food, or drinks, such use of the premises by the customer is not an incidental part of other significant uses, and the charges for the premises are part of the charges for the providing of meals, food, or drinks and, thus, are included in the taxable gross receipts from the sale of the meals, food, or drinks. Staff believes that subdivision (h)(4)(A) through (D) addresses examples of premises when the meals, food, or drinks may be incidental to other significant uses of the premises by the customer and is consistent with the historical staff and Board interpretations of the regulation.

Furthermore, staff proposes to clarify the application of tax when food is served during transportation. When meals, food, or drinks are provided during transportation, such as on a vessel or bus, the usual charges for transportation are not taxable as part of the gross receipts from the sale of the meals, food, or drinks. However, if the premises on which the meals, food, or drinks are provided are not at that time being used to transport the persons to whom the meals, food, or drinks are being provided, such as a vessel that remains moored, the charges for the use of those premises in connection with the serving of meals, food, or drinks are included in taxable gross receipts from the sale of the meals, food, or drinks.

Sales Made by Caterers for Student Meals

Staff proposes to incorporate language with respect to sales made by caterers for student meals, in subdivision (j)(2)(D), to include the findings in the Memorandum Opinion on John Chris Mogannam

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(see the Sales and Use Tax Memorandum Opinions in the Sales and Use Tax Law Guide, Volume 2). The exemption from tax afforded to sales of student meals as provided in Revenue and Taxation Code section 6363 is dependent upon whether the meal is sold by a qualifying group. If a caterer, rather than a qualifying group, sells the meals, the sale may be subject to tax or may be exempt, depending on the caterer's contract with the school or organization, and whether all of the criteria as set forth in the Memorandum Opinion on John Chris Mogannam are met. Tax does not apply to the sale by caterers of meals or food products for human consumption to students of a school if all the following criteria are met:

- 1) The premises used by the caterer to serve the lunches to the students are used by the school for other purposes, such as sporting events and other school activities, during the remainder of the day;
- 2) The fixtures and equipment used by the caterer are owned and maintained by the school; and
- 3) The students purchasing the meals cannot distinguish the caterer from the employees of the school.

Correction of Omission Regarding Institutions

Staff also proposes to correct the omission in the California Code of Regulations (CCR) noted with regard to subdivision (m), *Institutions*, by recommending that the 1989 regulatory language be incorporated into the current proposed regulation changes submitted for approval to the Office of Administrative Law.

Sales of Food through the Honor System

Sales of food through the "honor system" involve a system where food (generally snacks such as candy bars) is made available in an unattended tray or box. A container is either attached or nearby where customers place money to pay for their purchases. If such sales are made at or near eating facilities, such as in a lunch room, the sales are subject to tax.

Staff considered designating honor systems as vending machines and applying tax as provided in Revenue and Taxation Code section 6359.2, *Food products sold through vending machines*. In order to simplify tax reporting and auditing procedures, this statute provides that 33% of the sales of food through vending machines are subject to tax. Although sales of food through vending machines and honor boxes share common characteristics, staff believes that "honor boxes" do not meet the definition of vending machines and may not use the same reporting procedures. Staff believes that legislation is required before sales of food on the honor system can be treated in a manner similar to sales of food through vending machines.

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Consequently, without such legislation, the most appropriate place to address sales through the honor system is in Regulation 1603. Staff proposes to incorporate portions of Annotation 550.0270, *sales of snacks through the “honor system,”* into subdivision (t), as follows:

An “honor system snack sale” means a system where customers take snacks from a box or tray and pay by depositing money in a container provided by the seller. Snacks sold through such a system may be subject to tax depending upon where the sale takes place. Sales of such snacks are taxable when sold at or near a lunchroom, break room, or other facility that provides tables and chairs, and it is contemplated that the food sold will normally be consumed at such facilities. Honor system snack sales do not include hotel room mini-bars or snack baskets.

Non Substantive Changes

Staff has recommended various non-substantive grammatical changes to several subsections of this Regulation (see Exhibit 3).

Staff’s proposed regulation amendments have no operative date.

B. Pros of the Staff Recommendation

- Clarifies the application of tax for sales to and by caterers.
- Clarifies that caterers may purchase for resale tangible personal property regarded as being sold with meals, food or drinks, such as disposable plates napkins etc.
- Provides clarification on the application of tax regarding premises.
- Clarifies the application of tax to sales made by caterers for student meals.
- Incorporates Annotation 550.0270 regarding sales of snacks through the “honor system.”
- Corrects the omission in the CCR noted with regard to subdivision (m), *Institutions*.

C. Cons of the Staff Recommendation

Requires regulatory change.

D. Statutory or Regulatory Change

No statutory change is required. However, Regulation 1603 must be amended to incorporate the changes.

E. Administrative Impact

Staff will be required to notify taxpayers of the amendments to the regulation through an article in the Tax Information Bulletin, as well as updating and distributing the revised regulation.

FORMAL ISSUE PAPERIssue Paper Number 01 - 032**F. Fiscal Impact****1. Cost Impact**

No additional cost. Staff will notify taxpayers of the regulation amendments through a Tax Information Bulletin (TIB) article. The workload associated with publishing and distributing the TIB is considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

Staff believes that the revenue impact would be minor, less than \$10,000 annually. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Increases taxpayers' and customers' understanding of the application of tax regarding the providing of property by caterers in connection with the preparation and furnishing of food, thereby decreasing the likelihood of having to pay additional tax interest and penalty when audited.

H. Critical Time Frames

The proposed amendment represents an interpretation of existing statutes, and therefore has no operative date. Implementation will take place 30 days following approval of the regulation by the Office of Administrative Law.

VI. Alternative**A. Description of the Alternative**

This alternative is as proposed and supported by: The Motion Picture Association of America; Viacom; the Law Firm of Nielsen, Merksamer, Parinello, Mueller & Naylor; and Deloitte and Touche, (when appropriate herein referred to collectively as MPAA).

First, MPAA proposes deleting staff's proposed subdivision (h)(2)(A) and (B) and replacing it with the following language:

(2) SALES TO CATERERS

A caterer generally is considered to be the consumer of tangible personal property normally used in the furnishing and serving of meals, food or drinks, except for separately stated charges by the caterer for the lease of tangible personal property or

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tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers, and toothpicks.

MPAA proposes that tax applies to the tangible personal property normally used in furnishing and serving meals, food or drinks, unless the caterer *separately states* charges for the lease of tangible personal property, or separately stated charges of tangible personal property regarded as being sold with meals, food or drinks such as *disposable* plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers, and toothpicks. The result of this proposal would be to treat a caterer as the retailer/lessor of certain tangible personal property, rather than treating the caterer as the consumer of certain tangible personal property. This would be a change from the way in which the staff and Board have historically interpreted how the law applies to caterers.

MPAA believes that the proposed language would simplify administration of the revised regulation and provide that caterers may separately state their charges for the lease of tangible personal property. Moreover, MPAA believes that its proposed language is necessary to provide additional clarification and consistency with respect to the types of purchases of tangible personal property considered to be resold with the furnishing and serving of meals, food, or drinks.

In regard to sales *by* caterers, MPAA proposes to adopt staff's recommendation, except amend subdivision (h)(3)(A) to state that a caterer would also be the retailer/lessor of certain TPP and tax would apply in accordance to Regulation 1660 (new proposed text is underlined):

(3) SALES BY CATERERS.

(A) Caterer as Retailer. Tax applies to the entire charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer's employees or subcontractors. Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers. Tax applies to charges made by caterers for hot prepared food products as in (e) above whether or not served by the caterers. A caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property will be deemed to be the lessor of such property. Tax applies in accordance to Regulation 1660 Leases of Tangible Personal Property – In General. Tax does not apply to charges made by caterers for the rental of dishes, silverware, glasses, etc., purchased by the caterer with tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental.

Third, MPAA proposes to amend proposed subdivision (h)(3)(C)(2) to add at the end of the proposed language that when a caterer sells meals, food or drinks to other persons who charge a fee for their service unrelated to the taxable sale, that separately stated fee is not subject to tax. MPAA proposes to amend subdivision (h)(3)(C)(2) to add the following sentence:

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When a caterer sells meals, food or drinks and the serving of them to other persons who charge a fee for their service unrelated to the taxable sale, the separately stated fee is not subject to tax.

MPAA's believes that persons such as event planners and party coordinators also provide a number of services such as site location, travel arrangements, location transportation, hotel accommodations, etc. and Further, that the value of the services provided by these individuals is disproportionately weighted towards non-taxable products or services, and that any portion of their services that relate to taxable sales should be regarded as insignificant.

Fourth, Mr. Eric Miethke of the Law Offices of Nielsen, Merksamer, Parinello, Mueller & Naylor, on behalf of MPAA, proposes to amend subdivision (h)(4) to include provisions that when the premises are not *primarily used* for the purpose of serving meals, food, or drinks, the separately stated rental charge for such facilities are not included in gross receipts subject to tax. He proposes language for subdivision (h)(4) as follows:

(4) PREMISES NOT SUPPLIED BY THE CUSTOMER.

General. Food, meals, or drinks are sometimes served on premises not supplied by the customer. In such circumstances, the person serving the food, meals, or drinks is not a caterer as defined in subdivision (h)(1). When meals, food, or drinks are served on premises supplied by a person who is otherwise a caterer and the premises are primarily used for the purpose of serving meals, food, or drinks, the charge for the rental of the premises is included in the taxable gross receipts without regard to whether that charge is separately stated. However, when the premises are not primarily used for the purpose of serving meals, food, or drinks, the separately stated rental charge for such facility is not included in the gross receipts subject to tax. The separately stated rental charge should reflect a reasonable fair market rental value for such premises. "Primarily used," means the principle [sic] or functional use of the premises is normally for a business, entertainment, or recreational activity unrelated to the serving of meals, food, or drinks. Examples of premises not primarily used for the purpose of serving meals, food, or drinks are, including but not limited to, museums, circuses, aquariums, zoos, amusement parks, stadiums, parks, theaters, amphitheaters, studio stages, studio sets, studio facades, outdoor entertainment districts and other studio properties.

Under MPAA's proposal, the separately stated rental charges for premises such as museums, circuses, aquariums, zoos, amusement parks, stadiums, parks, theaters, amphitheaters, studio stages, studio sets, studio facades, outdoor entertainment districts and other studio properties will always be exempt, since these premises are classified as not primarily used for the purpose of serving meals, food, or drinks. This would be a change from the way in which the staff and the Board have historically interpreted how the law applies to caterers, and would alter the current regulatory treatment of caterers vis-a-vis hotels and restaurants. Under staff's proposed subdivision (h)(4) charges for these premises may or may not be exempt depending on the reasons the premises are being used and the amount of time the premises are being used.

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MPAA does not recommend an operative date for their proposal. A comparison of staff's, MPPA's proposed amendments is illustrated as Exhibit 2.

B. Pros of the Alternative

- Allows a caterer to be the retailer/lessor, rather than the consumer of TPP.
- Allows a caterer to be the retailer/lessor, rather than the consumer of certain TPP, when the charges are separately stated.
- Provides an expanded interpretation of primary use to be based on principal or functional use of the premises.
- Provides a bright line test.

C. Cons of the Alternative

- Creates in this regulation, a significant departure from the normal practice of considering a business as the consumer of the items it uses in providing a taxable product or service to its customers.
- Changes the interpretation of services included with a taxable sale.
- Puts hotels and restaurants at a disadvantage to caterers.
- Refers to, but does not adequately address, the event planner, designer, and coordinator industry.
- Introduces ambiguity concerning the "reasonable" fair market rental value for premises.
- Changes current and historical staff and Board interpretation of Regulation 1603.
- Requires regulatory change.

D. Statutory or Regulatory Change

No statutory change is required. However, Regulation 1603 must be amended to incorporate the changes.

E. Administrative Impact

Staff will be required to notify taxpayers of the amendments to the regulation through an article in the Tax Information Bulletin, as well as updating and distributing the revised regulation.

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F. Fiscal Impact

1. Cost Impact

No additional cost. Staff will notify taxpayers of the regulation amendments through a Tax Information Bulletin (TIB) article. The workload associated with publishing and distributing the TIB is considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

The revenue loss for this Alternative is estimated to be \$2.0 million annually. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

The proposed alternative may result in varying interpretations and applications of the law as it requires determining the concept of functional use which may create difficulty in administering the regulation fairly and uniformly.

H. Critical Time Frames

The proposed amendment represents an interpretation of existing statutes, and therefore has no operative date. Implementation will take place 30 days following approval of the regulation by the Office of Administrative Law.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of 10/19/2001

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REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



REVISED 10-19-01
PROPOSED REGULATORY CHANGES REGARDING CATERERS
UNDER REGULATION 1603
TAXABLE SALES OF FOOD PRODUCTS

Staff Recommendation

Staff recommends adoption of the proposed amendments to Regulation 1603, (as shown in Exhibit 3 of the issue paper), including:

- Caterers are the consumers of the property they use in connection with furnishing and serving meals, food or drinks, except for tangible personal property regarding as being sold with meals, food or drinks, such as disposable plates, napkins etc. [(h)(2)(A)]
- The entire charge made by caterers for serving meals, food or drinks is subject to tax. [(h)(3)(A)]
- Caterers are lessors of tangible personal property not related to the furnishing and serving of meals. [(h)(3)(B)]
- Meals sold to persons such as event planners who are selling on their own account are sales for resale. [(h)(3)(C)]
- Charges for premises are exempt when the event's primary purpose is other than the sale of food or drinks, or when the consumption of the meals, food or drinks, is an incidental part of other significant uses of the premises. [(h)(4)]
- Incorporate Memorandum of Opinion addressing sales made by caterers for student meals. [(j)(2)(D)]
- Incorporate Annotation 550.0270, addressing sales of snacks through the "honor system." [(t)]

Staff recommends no operative date.

Revenue Estimate

Alternative 1:

Adopt staff's recommendation except amend the following subdivisions:

- In subdivision (h)(2), state that caterers are generally considered the consumers of tangible personal property normally used in furnishing and serving meals, food and drinks except for separately stated charges for the leases of tangible personal property, or for items regarded as being sold with meals, food or drinks, such as disposable plates, napkins, etc.
- In subdivision (h)(3)(A), state that a caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property will be deemed to be the lessor of such property. Tax applies in accordance with Regulation 1660.
- In subdivision (h)(3)(C) 2., provide that when event planners charge a fee for their service unrelated to a taxable sale, the separately stated fee is not subject to tax.
- In subdivision (h)(4), provide that when the premises are ***primarily used*** for purposes other than serving meals, food or drinks, the separately stated rental charge for the facility is not subject to tax.

The alternative has no operative date.

Background, Methodology, and Assumptions**Staff Recommendation:**

The only provision of the staff recommendation that would impact sales and use tax revenue is the provision regarding charges for premises. In those cases where the premises are not supplied by the customer, charges for the premises would be exempt when the event's primary purpose is other than the sale of food or drinks, or when the consumption of the meals, food or drinks is an incidental part of other significant uses of the premises. This proposal for the most part reflects current practice, however there could be cases where certain charges for premises not supplied by the customer now considered subject to tax would be exempt under the staff recommendation. Staff believes that the sales and use tax revenue loss of this change would be minimal, less than \$10,000 annually.

Alternative 1:

Alternative 1 would provide that a caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property would be deemed to be the lessor of such property. Tax applies in accordance with Regulation 1660.

Currently, caterers are considered to be consumers of such tangible personal property so that tax applies when the caterer purchases or leases such items. In addition, tax currently applies to the entire charge made by the caterer for the furnishing and serving of meals, food or drinks without deduction for the items of which the caterer is considered the consumer.

Under the Alternative 1 proposal, the caterer would no longer be a consumer of these items but would be a retailer/lessor of these items and tax would apply in accordance with Regulation 1660. This means that the caterer could purchase these items ex-tax as sales for resale, or

Revenue Estimate

could pay the tax when the items are purchased, and subsequent leases of these items would not be subject to tax.

According to the U.S. Bureau of the Census 1997 Economic Census for Accommodations and Foodservices, caterers in California had sales of \$368.9 million in 1997. If we factor this amount to 2001 using the California Taxable Sales Deflator, 2001 sales by caterers are estimated to be \$479.5 million. We were unable to find any information regarding the total purchases by caterers of the above items or the total charges made by caterers for the above items. Since some of the items, such as tables and chairs, are most likely provided by the caterer in a majority of cases and others items might be provided only rarely, it is difficult to know what the effect of this proposal might be. However, as an indication of the order of magnitude of the sales and use tax revenue loss, if the charges for these items amount to 5% of the caterer's total charges, then the annual charges for these items would amount to \$24.0 million. The sales and use tax revenue on this amount at an effective tax rate of 7.92% would amount to \$1.9 million.

Alternative 1 would also, amend Regulation 1603 to add that when event planners charge a fee for their service unrelated to a taxable sale, the separately stated fee is not subject to tax. This proposal would not have any revenue impact.

In addition, alternative 1 would amend Regulation 1603 to provide that when the premises are not *primarily used* for the purpose of serving meals, food, or drinks, the separately stated rental charge for such a facility is not included in the gross receipts subject to tax. Based on information from audits, it is estimated that the sales and use tax revenue loss of this proposal would be minor, less than \$100,000 annually.

The total sales and use tax revenue loss for Alternative 1 is estimated to be \$2.0 million annually.

Revenue Estimate

Revenue Summary

Staff Recommendation:

The staff recommendation would result in a minimal sales and use tax revenue loss, less than \$10,000 annually.

Alternative 1:

An estimate of the order of magnitude of the sales and use tax revenue loss from treating caterers as lessors rather than consumers of tangible personal property and to exempt the separately stated rental charge for the facility when the premises are ***primarily used*** for a purpose other than serving meals, would be as follows:

	<u>Revenue Effect</u>
State loss (5%)	\$ 1.3 million
Local loss (2.25%)	0.6 million
Transit loss (0.67%)	0.1 million
Total	\$ 2.0 million

Preparation

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of October 19, 2001

Proposed Regulatory Changes Regarding Providing of Property by a Caterer in Connection with the Preparation and Furnishing of Food
Revised Comparison of Current and Proposed Language
Current as of October 19, 2001

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Regulatory Language Proposed by MPAA et al	Summary Comments
<p>ACTION 1 - Consent Items:</p> <p>1) Non-substantive grammatical change.</p>	<p>Regulation 1603, <i>Taxable Sales of Food Products</i>.</p> <p>(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS.</p> <p>(1) DEFINITIONS.</p> <p>(C) Complimentary Food and Beverages. As used in this subdivision (a), the term “complimentary food and beverages” means food and beverages (including alcoholic and non-alcoholic beverages) which are provided to transient guests on a complimentary basis and:</p> <p>1. there is no segregation between the charges for rooms and the charges for the food and beverages on the guests’ bills, and</p> <p>2. the guests are not given an option to refuse the food and beverages in return for a discounted room rental.</p> <p>(2) APPLICATION OF TAX.</p> <p>(A) In General. Tax applies to sales of meals or hot prepared food products (see (e) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar</p>	<p>Regulation 1603, <i>Taxable Sales of Food Products</i>.</p> <p>(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS.</p> <p>(1) DEFINITIONS.</p> <p>(C) Complimentary Food and Beverages. As used in this subdivision (a), the term “complimentary food and beverages” means food and beverages (including alcoholic and non-alcoholic beverages) which are provided to transient guests on a complimentary basis and:</p> <p>1. <u>T</u>here is no segregation between the charges for rooms and the charges for the food and beverages on the guests’ bills, and</p> <p>2. <u>T</u>he guests are not given an option to refuse the food and beverages in return for a discounted room rental.</p> <p>(2) APPLICATION OF TAX</p> <p>(A) In General. Tax applies to sales of meals or hot prepared food products (see (e) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar</p>	<p>Regulation 1603, <i>Taxable Sales of Food Products</i>.</p> <p>(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS.</p> <p>(2) DEFINITIONS.</p> <p>(C) Complimentary Food and Beverages. As used in this subdivision (a), the term “complimentary food and beverages” means food and beverages (including alcoholic and non-alcoholic beverages) which are provided to transient guests on a complimentary basis and:</p> <p>1. <u>T</u>here is no segregation between the charges for rooms and the charges for the food and beverages on the guests’ bills, and</p> <p>2. <u>T</u>he guests are not given an option to refuse the food and beverages in return for a discounted room rental.</p> <p>(2) APPLICATION OF TAX</p> <p>(A) In General. Tax applies to sales of meals or hot prepared food products (see (e) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar</p>	<p>Staff recommends capitalizing the first word of the sentence.</p>

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	establishments whether served on or off the premises. In the case of American Plan hotels, special packages offered by hotels, e.g., a New Year's Eve package as described in subdivision (a)(1)(E), and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for the meals, hot prepared food products, and beverages. Charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (h) below.)	establishments whether served on or off the premises. In the case of American Plan hotels, special packages offered by hotels, e.g., a New Year's Eve package as described in subdivision (a)(1)(E), and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for the meals, hot prepared food products, and beverages. Charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (h) below.)	establishments whether served on or off the premises. In the case of American Plan hotels, special packages offered by hotels, e.g., a New Year's Eve package as described in subdivision (a)(1)(E), and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for the meals, hot prepared food products, and beverages. Charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (h) below.)	
ACTION 1 Consent Items: 2) Clarify when a resale certificate may be accepted for the sale of meals or hot prepared food products.		<u>Sales of meals or hot prepared food products by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments to persons such as event planners, party coordinators, or fundraisers, which buy and sell on their own account, are sales for resale for which a resale certificate may be accepted (see subdivision (h)(3)(C)(2)).</u>	<u>Sales of meals or hot prepared food products by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments to persons such as event planners, party coordinators, or fundraisers, which buy and sell on their own account, are sales for resale for which a resale certificate may be accepted (see subdivision (h)(3)(C)(2)).</u>	Staff proposes to amend subdivision (a)(2)(A) to clarify when a resale certificate may be accepted for the sale of meals or hot prepared food products.

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ACTION 1 Consent Items: 1) Non-substantive grammatical change.	Souffle cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.	Souffle Soufflé cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.	Souffle Soufflé cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.	Staff recommends changing the word “Souffle” to Soufflé”.
ACTION 1 Consent items: 1) Non-substantive grammatical change.	<p>(c) COLD FOOD SOLD ON A “TAKE-OUT” ORDER.</p> <p>(2) DEFINITIONS.</p> <p>(A) For purposes of this subdivision (c), the term “suitable for consumption on the seller’s premises” means food products furnished:</p> <p>1. in a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and</p> <p>2. in a size which ordinarily may be immediately consumed by one person such as a large milk shake, a pint of ice cream, a pint of milk, or a slice of pie. Cold food products (excluding milk shakes and similar milk products) furnished in containers larger in size than a pint are considered to be in a form not suitable for immediate consumption.</p>	<p>(c) COLD FOOD SOLD ON A “TAKE-OUT” ORDER.</p> <p>(2) DEFINITIONS.</p> <p>(A) For purposes of this subdivision (c), the term “suitable for consumption on the seller’s premises” means food products furnished:</p> <p>1. In a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and</p> <p>2. In a size which ordinarily may be immediately consumed by one person such as a large milk shake, a pint of ice cream, a pint of milk, or a slice of pie. Cold food products (excluding milk shakes and similar milk products) furnished in containers larger in size than a pint are considered to be in a form not suitable for immediate consumption.</p>	<p>(c) COLD FOOD SOLD ON A “TAKE-OUT” ORDER.</p> <p>(2) DEFINITIONS.</p> <p>(A) For purposes of this subdivision (c), the term “suitable for consumption on the seller’s premises” means food products furnished:</p> <p>1. In a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and</p> <p>2. In a size which ordinarily may be immediately consumed by one person such as a large milk shake, a pint of ice cream, a pint of milk, or a slice of pie. Cold food products (excluding milk shakes and similar milk products) furnished in containers larger in size than a pint are considered to be in a form not suitable for immediate consumption</p>	<p>Staff recommends capitalizing the first word of the sentence.</p> <p>.</p> <p>Staff recommends capitalizing the first word of the sentence</p>

Proposed Regulatory Changes Regarding Providing of Property by a Caterer in Connection with the Preparation and Furnishing of Food
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Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Regulatory Language Proposed by MPAA et al	Summary Comments
ACTION 1 Consent items: 1) Non-substantive grammatical change.	(e) HOT PREPARED FOOD PRODUCTS. (1) GENERAL. Tax applies to all sales of hot prepared food products unless otherwise exempt. Hot soup, bouillon, or consomme is a hot prepared food product which is not a beverage.	(e) HOT PREPARED FOOD PRODUCTS. (1) GENERAL. Tax applies to all sales of hot prepared food products unless otherwise exempt. Hot soup, bouillon, or consomme <u>consommé</u> is a hot prepared food product, which is not a beverage.	(e) HOT PREPARED FOOD PRODUCTS. (1) GENERAL. Tax applies to all sales of hot prepared food products unless otherwise exempt. Hot soup, bouillon, or consomme <u>consommé</u> is a hot prepared food product, which is not a beverage.	Staff recommends changing the spelling of the word “consomme” to “consommé.”
ACTION 1 Consent items: 1) Non substantive grammatical change.	(h) CATERERS. The term “caterer” as used in this regulation means a person engaged in the business of serving meals, food, and drinks on the premises of the customers,	(h) CATERERS. <u>(1) DEFINITION.</u> The term “caterer” as used in this regulation means a person engaged in the business of serving meals, food, and or drinks on the premises of the customers,	(h) CATERERS. <u>(1) DEFINITION.</u> The term “caterer” as used in this regulation means a person engaged in the business of serving meals, food, and or drinks on the premises of the customers,	Staff and interested parties propose to change the word “and” to “or” and add the words “customer by the.”.
ACTION 1 Consent items: 3) Definition of caterers	but does not include employees hired by the hour or day.	<u>or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer,</u> but does not include employees hired by the <u>customer by the</u> hour or day.	<u>or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer,</u> but does not include employees hired by the <u>customer by the</u> hour or day.	Staff and interested parties propose to add the words “on premises supplied by the customer, including premises leased by the customer from a person other than the caterer.”
ACTION 2 Sales to Caterers.		<u>(2) SALES TO CATERERS.</u> <u>(A) Caterer as Consumer of Property Related to the Furnishing and Serving of Meals, Food, or Drinks.</u> A caterer generally is considered the consumer of tangible personal property such as tables, chairs, glasses, silverware, dishes, linens, etc. used in connection with the furnishing and serving of meals, food, or drinks, except	<u>(2) SALES TO CATERERS.</u> A caterer generally is considered to be the consumer of tangible personal property normally used in the furnishing and serving of meals, food or drinks, except for separately stated charges by the caterer for the lease of tangible personal property or tangible personal property regarded as being sold with meals, food or drinks such as disposable	Staff proposes to add subdivision (h)(2) to clarify when caterers are the consumers of property they use in connection with furnishing and serving meals, food, or drinks, except for tangible

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		<p><u>for tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks. The caterer is also the consumer of additional tangible personal property such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, electrical fixtures, as well as the labor to install and remove such items, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks. As the consumer, a caterer may not issue a resale certificate for the purchase or lease of such property used in connection with the serving of meals, food, or drinks because the caterer is the consumer of the property and, thus, neither sells nor rents such items to his or her customer irrespective of the method of billing. Rather, the sale or lease, unless the purchase of that leased property is excluded by Regulation 1660(b)(1)(E), of such property to a caterer is subject to sales or use tax.</u></p>	<p><u>plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks.</u></p>	<p>personal property regarded as being sold with meals, food or drinks.</p> <p>MPPA/proposes to add that caterers are generally considered the consumers of tangible personal property normally used in furnishing and serving meals, food or drinks except for: the separately stated charges for the leases of tangible personal property, or tangible personal property regarded as being sold with meals food or drinks, such as disposable plates, napkins, etc.</p>

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		<p><u>(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.</u></p> <p><u>1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of meals, food, or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.</u></p> <p><u>2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.</u></p>		

Proposed Regulatory Changes Regarding Providing of Property by a Caterer in Connection with the Preparation and Furnishing of Food
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ACTION 3: Sales by Caterers	<p>Tax applies to the entire charges made by caterers for serving meals, food, drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer's employees, or subcontractors.</p> <p>Tax applies to charges made by a caterer for preparing and serving meals and drinks even though the food is not provided by the caterers. Tax applies to charges made by caterers for hot prepared food products as in (e) above</p>	<p><u>(3) SALES BY CATERERS.</u></p> <p><u>(A) Caterer as Retailer.</u> Tax applies to the entire charges made by a caterers for <u>the serving of meals, food, or drinks</u>, inclusive of charges for food, the use of dishes, silverware, glasses, <u>plasticware, paper products</u>, chairs, tables, <u>linens, champagne fountains, ice-sculptures, table décor, invitations, menus, etc., which are</u> used in connection with serving meals, and for the labor of <u>planning, preparing, and</u> serving the meals, <u>food, or drinks</u> whether performed by the caterer, the caterer's employees, or subcontractors <u>(e.g., bartenders, wait staff and cooks).</u> <u>Charges made by the caterer for items such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, electrical fixtures as well as the labor to install and remove such items, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks, are included in the caterer's taxable gross receipts irrespective of the method of billing. Charges for hourly employees, associated with the furnishing of the meals, hired by a caterer are included in the caterer's gross receipts and subject to tax.</u> Tax <u>also</u> applies to charges made by a caterer for preparing and serving meals, <u>food, or</u> drinks even though the food is not provided by the caterers, <u>such as the cutting of a wedding cake or</u></p>	<p><u>(3) SALES BY CATERERS.</u></p> <p><u>(A) Caterer as Retailer.</u> Tax applies to the entire charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals, whether performed by the caterer, the caterer's employees or subcontractors.</p> <p>Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers. Tax applies to charges made by caterers for hot prepared food products as in (e) above</p>	<p>Staff proposes to clarify in subdivision (h)(3) that tax applies to the entire charge made by caterers for serving meals, food, or drinks by incorporating examples of such charges.</p> <p>MPAA proposes to add to the current regulatory language that a caterer who separately states or itemizes charges for the lease of tangible</p>

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	whether or not served by caterers. Tax does not apply to charges made by the caterer for the rental of dishes, silverware, glasses, etc, purchased by the caterer with tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental.	<u>corkage fees associated with the opening of beverages.</u> Tax applies to charges made by a person who is otherwise a caterer for hot prepared food products as in (e) above whether or not served by <u>that person or caterer.</u>	whether or not served by the caterers. <u>A caterer who separately states or itemizes charges for the lease of tangible personal property regardless of the use of the property will be deemed to be the lessor of such property.</u> Tax applies in accordance to Regulation 1660 <u>Leases of Tangible Personal Property – In General.</u> Tax does not apply to charges made by caterers for the rental of dishes, silverware, glasses, etc., purchased by the caterer with tax paid on the purchase price if no food is provided or served by the caterers in connection with such rental.	personal property regardless of the use of the property will be deemed to be the lessor of such property. Tax applies in accordance to Regulation 1660.
ACTION 1 Consent items: 4) Application of tax regarding sales by caterers		<u>(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.</u> <u>1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of meals, food or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.</u>	<u>(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.</u> <u>1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use</u> <u>himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of meals, food or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in</u>	Staff proposes to add subdivision (h)(3) (B) to clarify when caterers are lessors of property unrelated to the serving or furnishing of meals, food, or drinks.

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			<u>accordance with Regulation 1660.</u>	
		2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, linen, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.	2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, linen, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.	
ACTION 4		<u>(C) Caterers Planning, Designing and Coordinating Events.</u>	<u>(C) Caterers Planning, Design and Coordinating Events.</u>	
Caterers Planning, Designing and Coordinating Events.		1. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g.,	1. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g.,	Staff proposes to add subdivision (h)(3) (C) to clarify that tax applies to charges by caterers when caterers are planning designing and coordinating events if they are made in connection with the furnishing of meals, food or drinks for the event.

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		<p><u>coat-check clerks, parking attendants, security guards, etc.</u></p> <p><u>2. When a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668. A person is buying or selling for his or her own account, or own sake, when such person has his or her own contract with a customer to sell the meals, food, or drinks to the customer, and is not merely acting on behalf of the caterer.</u></p>	<p><u>coat-check clerks, parking attendants, security guards, etc.</u></p> <p><u>2. When a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668. A person is buying or selling for his or her own account, or own sake, when such person has his or her own contract with a customer to sell the meals, food, or drinks to the customer, and is not merely acting on behalf of the caterer.</u></p> <p><u>When a caterer sells meals, food or drinks and the serving of them to other persons who charge a fee for their service unrelated to the taxable sale, the separately stated fee is not subject to tax.</u></p>	<p>MPAA proposes to amend staff's proposed language by adding at the end of staffs language that when a caterer sells meals, food or drinks and the serving of them to other persons who charge a fee for their service and the service is unrelated to the taxable sale, the separately stated fee is not subject to tax.</p> <p>Staff does not recommend an expansion of the regulation at this time to deal with the industry of event planners, except as to those persons who are caterers and also provide such services.</p>

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<p>ACTION 1 Consent Items:</p> <p>5) Application of tax to sales of meals by caterers to social clubs, and fraternal organizations.</p>	<p>[Continuation from (h)]</p> <p>Sales of meals by caterers to social clubs, fraternal organizations or other persons are sales for resale if such social clubs, fraternal organizations or other persons are the retailers of the meals subject to tax under (i) below and give valid resale certificates therefor.</p>	<p><u>(D) Sales of Meals by Caterers to Social Clubs, Fraternal Organizations.</u> <u>Sales of meals to social clubs and fraternal organizations, as those terms are defined in subdivision (i) below, by caterers are sales for resale if such social clubs and fraternal organizations are the retailers of the meals subject to tax under subdivision (i) and give valid resale certificates therefor.</u></p>	<p><u>(D) Sales of Meals by Caterers to Social Clubs, Fraternal Organizations.</u> <u>Sales of meals to social clubs and fraternal organizations, as those terms are defined in subdivision (i) below, by caterers are sales for resale if such social clubs and fraternal organizations are the retailers of the meals subject to tax under subdivision (i) and give valid resale certificates therefor.</u></p>	<p>Staff proposes to amend and move the last paragraph in subdivision (h) to subdivision (h)(3)(D) to clarify the application of tax to sales of meals by caterers to social clubs, and fraternal organizations.</p>
<p>ACTION 1 Consent Items:</p> <p>6) Application of tax to tips, gratuities, and service charges.</p>		<p><u>(E) Tips, Gratuities, or Service Charges:</u> <u>An optional tip or gratuity is not subject to tax. A mandatory tip, gratuity, or service charge is included in taxable gross receipts. A tip, gratuity, or service charge negotiated in advance of an event between the caterer and the customer is mandatory even though the amount or percentage is negotiated. A tip, gratuity, or service charge itemized on an invoice or billing by a caterer is not optional even if the invoice or billing itemizes with a notation such as “optional gratuity.” A gratuity is optional only if it is voluntarily added by the customer. Examples of mandatory tips, gratuities, or service charges include:</u></p> <p><u>“A 15% gratuity [or service charge] will be added to parties of 8 or more.”</u></p>	<p><u>(E) Tips, Gratuities, or Service Charges:</u> <u>An optional tip or gratuity is not subject to tax. A mandatory tip, gratuity, or service charge is included in taxable gross receipts. A tip, gratuity, or service charge negotiated in advance of an event between the caterer and the customer is mandatory even though the amount or percentage is negotiated. A tip, gratuity, or service charge itemized on an invoice or billing by a caterer is not optional even if the invoice or billing itemizes with a notation such as “optional gratuity.” A gratuity is optional only if it is voluntarily added by the customer. Examples of mandatory tips, gratuities, or service charges include:</u></p> <p><u>“A 15% gratuity [or service charge] will be added to parties of 8 or more.”</u></p>	<p>Staff proposes to add subdivision (h)(3)(E) to clarify the application of tax to tips, gratuities, and service charges.</p>

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		<p><u>“Suggested gratuity 15%,” itemized on the invoice or bill by the caterer.</u></p> <p><u>Tips, gratuities, and service charges are further discussed in subdivision (g).</u></p>	<p><u>“Suggested gratuity 15%,” itemized on the invoice or bill by the caterer.</u></p> <p><u>Tips, gratuities, and service charges are further discussed in subdivision (g).</u></p>	
<p>ACTION 5</p> <p>Application of tax when premises are not supplied by the customer</p>		<p><u>(4) PREMISES NOT SUPPLIED BY THE CUSTOMER.</u></p> <p><u>(A) General. When a person serves meals, food, or drinks on premises not supplied by the customer, that person is not a caterer as defined in subdivision (h)(1), without regard to whether the premises supplied to the customer are owned or leased by that person for his or her own general use, or the premises are rented or leased by that person for the specific job. Except as provided in subdivisions (h)(4)(B), (C), and (D) below, when a person serves meals, food, or drinks on premises that the person supplies, the charges to the customer for the premises are part of the charges for the service of the meals, food, or drinks, and are included in the person’s taxable gross receipts from the sale of meals, food, or drinks without regard to whether the charges are separately stated.</u></p>	<p><u>(4) PREMISES NOT SUPPLIED BY THE CUSTOMER.</u></p> <p><u>General. Food, meals, or drinks are sometimes served on premises not supplied by the customer. In such circumstances, the person serving the food, meals, or drinks is not a caterer as defined in subdivision (h)(1). When meals, food, or drinks are served on premises supplied by a person who is otherwise a caterer and the premises are primarily used for the purpose of serving meals, food, or drinks, the charge for the rental of the premises is included in the taxable gross receipts without regard to whether that charge is separately stated. However, when the premises are not primarily used for the purpose of serving meals, food, or drinks, the separately stated rental charge for such facility is not included in the gross receipts subject to tax. The separately stated rental charge should reflect a reasonable fair market rental value for such premises. "Primarily used" means the principle or functional use of the premises is normally for a business, entertainment, or recreational activity unrelated to the serving of meals, food, or drinks.</u></p>	<p>Staff proposes to add subdivision (h)(4) to clarify that charges for the premises are included in the caterer’s gross receipts, with certain exceptions: when the event’s primary purpose is not providing, food or drinks; when meals, food or drinks are an incidental part of other significant uses of the premises by a specific customer or by all persons who use the premise; and when food is served during transportation.</p> <p>MPAA proposes that a primary use test (the usual functional use of the premises) apply to determine whether charges for premises</p>

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			<p><u>Examples of premises not primarily used for the purpose of serving meals, food, or drinks are, including but not limited to, museums, circuses, aquariums, zoos, amusement parks, stadiums, parks, theaters, amphitheaters, studio stages, studio sets, studio facades, outdoor entertainment districts and other studio properties.</u></p>	<p>not supplied by the customer are included in taxable gross receipts.</p> <p>MPAA proposes to provide that when the premises are primarily used for purposes other than serving meals, food, or drinks, the separately stated rental charge for the facility is not subject to tax.</p> <p>MPAA also specifies that a separately stated rental charge should reflect a reasonable fair market rental value for such premises.</p>
		<p><u>(B) Event's Primary Purpose Is Not Providing, Food, or Drinks.</u> When a person serves food or drinks on premises that person supplies, charges for the premises are included in taxable gross receipts from the sale of the food or drinks, unless:</p> <p>1. The premises are supplied for an event, such as awards ceremony, press conference, concert, fundraiser, or a dance, where the primary purpose of the event is other than the providing of food or drinks, and</p> <p>2. The food or drinks provided at the</p>		

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		<p><u>event are solely drinks and/or hors d'oeuvres or appetizers.</u></p>		
		<p><u>If the above conditions are met, the charges to the customer for the premises are not taxable as part of the gross receipts from the sale of the food and/or drinks, but the charges for the food and/or drinks and related services are subject to tax.</u></p> <p><u>(C) Meal, Food, or Drinks as an Incidental Part of Other Significant Uses of Premises by Customers.</u></p> <p><u>1. Room in Hotels, Restaurants, Fraternal Lodges, and Similar Facilities. Charges by a restaurant, hotel, fraternal lodge, or a similar facility for the use of a room as part of the service of meals, food, or drinks are included in taxable gross receipts from the sale of the meals food, or drinks. However, when daily room charges are made and meals, food, or drinks are served at some point during the day as an incidental part of other significant uses of the same room by the customer, such as business meetings, seminars, and similar functions, separately stated room charges are not taxable as part of the gross receipts from the sale of meals, food, or drinks, but the charges for the meals, food, or drinks and related services are subject to tax. If</u></p>		

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		<u>meals, food, or drinks are served in a different room from the room(s) used for the function, the charges for that room are included in taxable gross receipts from the sale of meals, food or drinks.</u>		
		<u>2. Other Premises. Charges for the use of premises other than those described in subdivision (h)(4)(C) 1., supplied by a person who also serves meals, food, or drinks thereon, are included in taxable gross receipts from the sale of meals, food, or drinks, unless all of the following conditions are met:</u> <u>a. The primary use of the premises on a daily basis is for other than the serving and eating of meals, food, or drinks;</u> <u>b. The premises may be rented without any meals, food, or drinks being provided;</u> <u>c. The charges for the premises are the same amount whether or not meals, food, or drinks are provided,</u> <u>d. The charges for the premises are separately stated in the contract; and</u> <u>e. The person's provision of meals, food, or drinks to the customer is only an incidental part of the customer's other significant uses of the premises.</u> <u>Examples of premises where the meals, food, or drinks may be incidental to other significant uses of the premises by the customer include, but are not limited to, museums, amusement parks, permanent</u>		

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		<u>life-size replicas of neighborhood or city street scenes at theme parks and motion picture studios, circuses, aquariums, and zoos. However, if such premises are provided for only the amount of time sufficient for the serving and eating of the meals, food, or drinks, such use of the premises by the customer is not an incidental part of other significant uses and the charges for the premises are part of the charges for the providing of meals, food, or drinks and, thus, are included in the taxable gross receipts from the sale of meals, food, or drinks.</u>		
		<u>(D) When Food Served During Transportation.</u> <u>When meals, food, or drinks are provided during transportation, such as on a vessel or bus, the usual charges for transportation are not taxable as part of the gross receipts from the sale of the meals, food, or drinks. However, if the premises on which the meals, food, or drinks are provided are not at that time being used to transport the persons to whom the meals, food, or drinks are being provided, such as a vessel that remains moored, the charges for the use of those premises in connection with the serving of meals, food, or drinks are included in taxable gross receipts from the sale of the meals, food, or drinks.</u>		

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ACTION 1 Consent Items: 1) Non-substantive change.	(k) EMPLOYEES' MEALS. (3) NO SPECIFIC CHARGE. If no specific charge is made by an employer for meals consumed by employees, the employer is the consumer of the food products and the non-food products which are furnished to the employees as a part of the meals.	(k) EMPLOYEES' MEALS (3) NO SPECIFIC CHARGE. If no <u>specific charge is made by</u> an employer <u>makes no specific charge</u> for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals.	(k) EMPLOYEES' MEALS (3) NO SPECIFIC CHARGE. If no <u>specific charge is made by</u> an employer <u>makes no specific charge</u> for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals.	Staff proposes to amend subdivision (k)(3) to delete the words "no specific charge is made by" and replace with "makes no specific charge" to clarify how tax applies to employee meals when no specific charge is made.
ACTION 1 Consent Items: 9) Non-substantive change to correct omission regarding institutions.	(m) INSTITUTIONS. Tax does not apply to the sale of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients and residents of an "institution" as defined in Regulation 1503	(m) INSTITUTIONS Tax does not apply to the sale of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients or and residents of an "institution" as defined in Regulation 1503. <u>Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of the institution</u>	(m) INSTITUTIONS Tax does not apply to the sale of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients or and residents of an "institution" as defined in Regulation 1503. <u>Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of the institution</u>	Staff proposes to amend subdivision (m) to correct the omission in the CCR noted with regard to subdivision (m) by recommending that the 1989 regulatory language be incorporated into the current regulation changes.

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ACTION 1 Consent Items: 10) Incorporate Annotation 550.0270 into the regulation.		<u>(t) HONOR SYSTEM SNACK SALES. An “honor system snack sale” means a system where customers take snacks from a box or tray and pay by depositing money in a container provided by the seller. Snacks sold through such a system may be subject to tax depending upon where the sale takes place. Sales of such snacks are taxable when sold at or near a lunchroom, break room, or other facility that provides tables and chairs, and it is contemplated that the food sold will normally be consumed at such facilities. Honor system snack sales do not include hotel room mini-bars or snack baskets.</u>	<u>(t) HONOR SYSTEM SNACK SALES. An “honor system snack sale” means a system where customers take snacks from a box or tray and pay by depositing money in a container provided by the seller. Snacks sold through such a system may be subject to tax depending upon where the sale takes place. Sales of such snacks are taxable when sold at or near a lunchroom, break room, or other facility that provides tables and chairs, and it is contemplated that the food sold will normally be consumed at such facilities. Honor system snack sales do not include hotel room mini-bars or snack baskets</u>	Staff proposes to incorporate Annotation 550.0270 “Honor System Snack Sales” into the regulation.

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Regulation 1603. Taxable Sales of Food Products.

Reference: Sections 6006, 6012, 6359, 6359.1, 6359.45, 6361, 6363, 6363.5, 6363.6, 6370, 6373, 6374 and 6376.5, Revenue and Taxation Code.
Food Products Generally, see Regulation 1602.
Alcoholic Beverages, tax reimbursement when served with, see Regulation 1700.
“Free” meals with purchased meals, see Regulation 1670.
Meals served to patients and inmates of an institution, see Regulation 1503.
Vending Machines, when considered selling meals, see Regulation 1574.
Meals at summer camps, see Regulation 1506 (e).
Parent-Teacher associations as consumers, see Regulation 1597.

(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS.

(1) DEFINITIONS.

(A) Boarding House. The term “boarding house” as used in this regulation means any establishment regularly serving meals, on the average to five or more paying guests. The term includes a “guest home,” “residential care home,” “halfway house,” and any other establishment providing room and board or board only, which is not an institution as defined in Regulation 1503 and Section 6363.6 of the Revenue and Taxation Code. The fact that guests may be recipients of welfare funds does not affect the application of tax. A person or establishment furnishing meals on the average to fewer than five paying guests during the calendar quarter is not considered to be engaged in the business of selling meals at retail.

(B) American Plan Hotel. The term “American Plan Hotel” as used in this regulation means a hotel which charges guests a fixed sum by the day, week, or other period for room and meals combined.

(C) Complimentary Food and Beverages. As used in this subdivision (a), the term “complimentary food and beverages” means food and beverages (including alcoholic and non-alcoholic beverages) which are provided to transient guests on a complimentary basis and:

1. There is no segregation between the charges for rooms and the charges for the food and beverages on the guests’ bills, and
2. The guests are not given an option to refuse the food and beverages in return for a discounted room rental.

(D) Average Retail Value of Complimentary Food and Beverages. The term “average retail value of complimentary food and beverages” (ARV) as used in this regulation means the total amount of the costs of the complimentary food and beverages for the preceding calendar year marked-up one hundred percent (100%) and divided by the number of rooms rented for that year. Costs of complimentary food and beverages include charges for delivery to the lodging establishment but exclude discounts taken and sales tax reimbursement paid to vendors. The

100% markup factor includes the cost of food preparation labor by hotel employees, the fair rental value of hotel facilities used to prepare or serve the food and beverages, and profit.

(E) Average Daily Rate. The term “average daily rate” (ADR) as used in this regulation means the gross room revenue for the preceding calendar year divided by the number of rooms rented for that year. “Gross room revenue” means and includes the full charge to the hotel customers but excludes separately stated occupancy taxes, revenue from contract and group rentals which do not qualify for complimentary food and beverages, and revenue from special packages (e.g., New Year’s Eve packages which include food and beverages as well as guest room accommodations), unless it can be documented that the retail value of the food and beverages provided as a part of the special package is 10% or less of the total package charge as provided in subdivision (a)(2)(B). “Number of rooms rented for that year” means the total number of times all rooms have been rented on a nightly basis provided the revenue for those rooms is included in the “gross room revenue”. For example, if a room is rented out for three consecutive nights by one guest, that room will be counted as rented three times when computing the ADR.

(2) APPLICATION OF TAX.

(A) In General. Tax applies to sales of meals or hot prepared food products (see (e) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments whether served on or off the premises. In the case of American Plan hotels, special packages offered by hotels, e.g., a New Year’s Eve package as described in subdivision (a)(1)(E), and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for the meals, hot prepared food products, and beverages. Charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (h) below.) Sales of meals or hot prepared food products by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments to persons such as event planners, party coordinators, or fundraisers, which buy and sell on their own account, are sales for resale for which a resale certificate may be accepted (see subdivision (h)(3)(C)(2)).

~~Souffle~~ Soufflé cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.

(B) Complimentary Food and Beverages. Lodging establishments which furnish, prepare, or serve complimentary food and beverages to guests in connection with the rental of rooms are consumers and not retailers of such food and beverages when the retail value of the complimentary food and beverages is “incidental” to the room rental service regardless of where within the hotel premises the complimentary food and beverages are served. For complimentary food and beverages to qualify as “incidental” for the current calendar year, the average retail value of the complimentary food and beverages (ARV) furnished for the preceding calendar year must be equal to or less than 10% of the average daily rate (ADR) for that year.

If a hotel provides guests with coupons or similar documents which may be exchanged for complimentary food and beverages in an area of the hotel where food and beverages are sold on a regular basis to the general public (e.g., a restaurant), the hotel will be considered the consumer and not the retailer of such food and beverages if the coupons or similar documents are non-transferable and the guest is specifically identified by name. If the coupons or similar documents are transferable or the guest is not specifically identified, food and beverages provided will be considered sold to the guest at the fair retail value of similar food and beverages sold to the general public. In the case of coupons redeemed by guests at restaurants not operated by the lodging establishment, the hotel will be considered the consumer of food and beverages provided to the hotel's guests and tax will apply to the charge by the restaurant to the hotel.

Lodging establishments are retailers of food and beverages which do not qualify as "incidental" and tax applies as provided in subdivision (a)(2)(A) above. Amounts paid by guests for food and beverages in excess of a complimentary allowance are gross receipts subject to the tax. Lodging establishments are retailers of otherwise complimentary food and beverages sold to non-guests.

In the case of hotels with concierge floor, club level or similar programs, the formula set forth above shall be applied separately with respect to the complimentary food and beverages furnished to guests who participate in the concierge, club or similar program. That is, the concierge, club or similar program will be deemed to be an independent hotel separate and apart from the hotel in which it is operated. The ADR and the retail value of complimentary food and beverages per occupied room will be computed separately with respect to the guest room accommodations entitled to the privileges and amenities involved in the concierge, club or similar program.

The following example illustrates the steps in determining whether the food and beverages are complimentary:

FORMULA: $ARV \div ADR \leq 10\%$

Average Daily Rate (ADR):

Room Revenue	\$9,108,000
Rooms Rented	74,607

ADR (\$9,108,000 ÷ 74,607) \$122.08

**Average Retail Value of Complimentary
Food and Beverages (ARV):**

Complimentary Food Cost	\$169,057
Complimentary Beverage Cost	52,513
Total	\$221,570
Add 100% Markup	221,570

Average Retail Value \$443,140
ARV per occupied room ($\$443,140 \div 74,607$) \$5.94

Application of Formula: $\$5.94 \div \$122.08 = 4.87\%$

In the above example, the average retail value of the complimentary food and beverages per occupied room for the preceding calendar year is equal to or less than 10% of the average daily rate. Therefore, under the provisions of this subdivision (a)(2)(B), the complimentary food and beverages provided to guests for the current calendar year qualify as “incidental”. The lodging establishment is the consumer and not the retailer of such food and beverages. This computation must be made annually.

When a lodging establishment consists of more than one location, the operations of each location will be considered separately in determining if that location’s complimentary food and beverages qualify as incidental.

(b) “DRIVE-INS.” Tax applies to sales of food products ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the “drive-in” establishment, even though such products are sold on a “take out” or “to go” order and are actually packaged or wrapped and taken from the premises of the retailer. Food products when sold in bulk, i.e., in quantities or in a form not suitable for consumption on the retailer’s premises, are not regarded as ordinarily sold for immediate consumption on or near the location at which parking facilities are provided by the retailer. Accordingly, with the exception of sales of hot prepared food products (see (e) below) and sales of cold food under the 80-80 rule (see (c) below), sales of ice cream, doughnuts, and other individual food items in quantities obviously not intended for consumption on the retailer’s premises, without eating utensils, trays or dishes and not consumed on the retailer’s premises, are exempt from tax. Any retailer claiming a deduction on account of food sales of this type must support the deduction by complete and detailed records.¹

(c) COLD FOOD SOLD ON A “TAKE-OUT” ORDER.

(1) GENERAL.

(A) Seller Meeting Criteria of 80-80 Rule. When a seller meets both criteria of the 80-80 rule as explained in subdivision (c)(3) below, tax applies to sales of cold food products (including sales for a separate price of hot bakery goods and hot beverages such as coffee) in a form suitable for consumption on the seller’s premises even though such food products are sold on a “take-out” or “to go” order. Sales of cold food products which are suitable for consumption on the seller’s premises are subject to the tax no matter how great the quantity purchased, e.g., 40 one-half pint containers of milk. Except as provided elsewhere in this regulation, tax does not apply to sales of food products which are furnished in a form not suitable for consumption on the seller’s premises.

Operative April 1, 1996, although a seller may meet both criteria of the 80-80 rule, he or she may elect to separately account for the sale of “take-out” or “to go” orders of cold food products

which are in a form suitable for consumption on the seller's premises. The gross receipts from the sale of those food products shall be exempt from the tax provided the seller keeps a separate accounting of these transactions in his or her records. Tax will remain applicable to the sale of food products as provided in subdivisions (a), (b), (e), or (f) of this regulation. Failure to maintain the required separate accounting and documentation claimed as exempt under this subdivision will revoke the seller's election under this subdivision.

(B) Seller Not Meeting Criteria of 80-80 Rule. When a seller does not meet both criteria of the 80-80 rule as explained in subdivision (c)(3) below, tax does not apply to sales of cold food products (including sales for a separate price of hot bakery goods and hot beverages such as coffee) when sold on a "take-out" or "to go" order.

(2) DEFINITIONS.

(A) For purposes of this subdivision (c), the term "suitable for consumption on the seller's premises" means food products furnished:

1. In a form which requires no further processing by the purchaser, including but not limited to cooking, heating, thawing, or slicing, and
2. In a size which ordinarily may be immediately consumed by one person such as a large milk shake, a pint of ice cream, a pint of milk, or a slice of pie. Cold food products (excluding milk shakes and similar milk products) furnished in containers larger in size than a pint are considered to be in a form not suitable for immediate consumption.

Pieces of candy sold in bulk quantities of one pound or greater are deemed to be sold in a form not suitable for consumption on the seller's premises.

The term does not include cold food products which obviously would not be consumed on the premises of the seller, e.g., a cold party tray or a whole cold chicken.

(B) For purposes of this subdivision (c), the term "seller's premises" means the individual location at which a sale takes place rather than the aggregate of all locations of the seller. For example, if a seller operates several drive-in and fast food restaurants, the operations of each location stand alone and are considered separately in determining if the sales of food products at each location meet the criteria of the 80-80 rule.

When two or more food-selling activities are conducted by the same person at the same location, the operations of all food related activities will be considered in determining if the sales of food products meet the criteria of the 80-80 rule. For example, if a seller operates a grocery store and a restaurant with no physical separation other than separate cash registers, the grocery store operations will be included in determining if the sales of food products meet the criteria of the 80-80 rule. When there is a physical separation where customers of one operation may not pass freely into the other operation, e.g., separate rooms with separate entrances but a common kitchen, each operation will be considered separately for purposes of this subdivision (c).

(3) 80-80 Rule. Tax applies under this subdivision (c) only if the seller meets *both* of the following criteria:

(A) more than 80 percent of the seller's gross receipts are from the sale of food products, and

(B) more than 80 percent of the seller's retail sales of food products are taxable as provided in subdivisions (a), (b), (e), and (f) of this regulation.

Sales of alcoholic beverages, carbonated beverages, or cold food to go not suitable for immediate consumption should not be included in this computation. Any seller meeting both of these criteria and claiming a deduction for the sale of cold food products in a form not suitable for consumption on the seller's premises must support the deduction by complete and detailed records of such sales made.

(d) PLACES WHERE ADMISSION IS CHARGED.

(1) GENERAL. Tax applies to sales of food products when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, during the period when the sales are made, except for national and state parks and monuments, and marinas, campgrounds, and recreational vehicle parks.

(2) DEFINITIONS.

(A) "Place" means an area the exterior boundaries of which are defined by walls, fences or otherwise in such a manner that the area readily can be recognized and distinguished from adjoining or surrounding property. Examples include buildings, fenced enclosures and areas delimited by posted signs.

(B) "Within a place" means inside the door, gate, turnstile, or other point at which the customer must pay an admission charge or present evidence, such as a ticket, that an admission charge has been paid. Adjacent to, or in close proximity to, a place is not within a place.

(C) "Admission charge" means any consideration required to be paid in money or otherwise for admittance to a place. "Admission charge" does not include:

1. Membership dues in a club or other organization entitling the member to, among other things, entrance to a place maintained by the club or organization, such as a fenced area containing a club house, tennis courts, and a swimming pool. Where a guest is admitted to such a place only when accompanied by or vouched for by a member of the club or organization, any charge made to the guest for use of facilities in the place is not an admission charge.

2. A charge for a student body card entitling the student to, among other things, entrance to a place, such as entrance to a school auditorium at which a dance is held.

3. A charge for the use of facilities within a place to which no entrance charge is made to spectators. For example, green fees paid for the privilege of playing a golf course, a charge made

to swimmers for the use of a pool within a place, or a charge made for the use of lanes in a public bowling place.

(D) “National and state parks and monuments” means those which are part of the National Park System or the State Park System. The phrase does not include parks and monuments not within either of those systems, such as city, county, regional, district or private parks.

(3) **Presumption That Food Is Sold for Consumption Within a Place.**

When food products are sold within a place the entrance to which is subject to an admission charge, it will be presumed, in the absence of evidence to the contrary, that the food products are sold for consumption within the place. Obtaining and retaining evidence in support of the claimed tax exemption is the responsibility of the retailer. Such evidence may consist, for example, of proof that the sales were of canned jams, cake mixes, spices, cooking chocolate, or other items in a form in which it is unlikely that such items would be consumed within the place where sold.

(4) **Food Sold to Students.** The exemption otherwise granted by Section 6363 does not apply to sales of food products to students when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, and such sales are subject to tax except as provided in (p) of this regulation. For example, when food products are sold by a student organization to students or to both students and nonstudents within a place the entrance to which is subject to an admission charge, such as a place where school athletic events are held, the sales to both students and nonstudents are taxable.

(e) HOT PREPARED FOOD PRODUCTS.

(1) **GENERAL.** Tax applies to all sales of hot prepared food products unless otherwise exempt. “Hot prepared food products” means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold. The mere heating of a food product constitutes preparation of a hot prepared food product, e.g., grilling a sandwich, dipping a sandwich bun in hot gravy, using infra-red lights, steam tables, etc. If the sale is intended to be of a hot food product, such sale is of a hot food product regardless of cooling which incidentally occurs. For example, the sale of a toasted sandwich intended to be in a heated condition when sold, such as a fried ham sandwich on toast, is a sale of a hot prepared food product even though it may have cooled due to delay. On the other hand, the sale of a toasted sandwich which is not intended to be in a heated condition when sold, such as a cold tuna sandwich on toast, is not a sale of a hot prepared food product. When a single price has been established for a combination of hot and cold food items, such as a meal or dinner which includes cold components or side items, tax applies to the entire established price regardless of itemization on the sales check. The inclusion of any hot food product in an otherwise cold combination of food products sold for a single established price, results in the tax applying to the entire established price, e.g., hot coffee served with a meal consisting of cold food products, when the coffee is included in the established price of the meal. If a single price for the combination of hot and cold food items is listed on a menu, wall sign or is otherwise advertised,

a single price has been established. Except as otherwise provided in (b), (c), (d) or (f) of this regulation, or in Regulation 1574, tax does not apply to the sale for a separate price of bakery goods, beverages classed as food products, or cold or frozen food products. Hot bakery goods and hot beverages such as coffee are hot prepared food products but their sale for a separate price is exempt unless taxable as provided in (b), (c), (d) or (f) of this regulation, or in Regulation 1574. Tax does apply if a hot beverage and a bakery product or cold food product are sold as a combination for a single price. Hot soup, bouillon, or ~~consomme~~ consommé is a hot prepared food product, which is not a beverage.

(2) **AIR CARRIERS ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.** Tax does not apply to the sale, storage, use, or other consumption of hot prepared food products sold by caterers or other vendors to air carriers engaged in interstate or foreign commerce for consumption by passengers on such air carriers, nor to the sale, storage, use, or other consumption of hot prepared food products sold or served to passengers by air carriers engaged in interstate or foreign commerce for consumption by passengers on such air carriers. "Air carriers" are persons or firms in the business of transporting persons or property for hire or compensation, and include both common and contract carriers. "Passengers" do not include crew members. Any caterer or other vendor claiming the exemption must support it with an exemption certificate from the air carrier substantially in the form prescribed in Appendix A of this regulation.

(f) FOOD FOR CONSUMPTION AT FACILITIES PROVIDED BY THE RETAILER.

Tax applies to sales of sandwiches, ice cream, and other foods sold in a form for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

A passenger's seat aboard a train, or a spectator's seat at a game, show, or similar event is not a "chair" within the meaning of this regulation. Accordingly, except as otherwise provided in (c), (d), and (e) above, tax does not apply to the sale of cold sandwiches, ice cream, or other food products sold by vendors passing among the passengers or spectators where the food products are not "for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer."

(g) TIPS AND SERVICE CHARGES. No employer shall collect, take, or receive any gratuity or a part thereof, paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of such gratuity, or require an employee to credit the amount, or any part thereof, of such gratuity against and as a part of the wages due the employee from the employer. (Labor Code §section 351.) If this prohibition is violated, any amount of such gratuities received by the employer will be considered a part of the gross receipts of the employer and subject to the tax.

Amounts designated as service charges, added to the price of meals are a part of the selling price of the meals and, accordingly, must be included in the retailer's gross receipts subject to tax even though such service charges are made in lieu of tips and are paid over by the retailer to employees.

(h) CATERERS.

(1) DEFINITION

The term “caterer” as used in this regulation means a person engaged in the business of serving meals, food, ~~and or~~ drinks on the premises of the customers, or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer, but does not include employees hired by the customer by the hour or day.

(2) SALES TO CATERERS.

(A) Caterer as Consumer of Property Related to the Furnishing and Serving of Meals, Food, or Drinks. A caterer generally is considered the consumer of tangible personal property such as tables, chairs, glasses, silverware, dishes, linens, etc. used in connection with the furnishing and serving of meals, food, or drinks, except for tangible personal property regarded as being sold with meals, food or drinks such as disposable plates, napkins, utensils, glasses, cups, stemware, place mats, trays, covers and toothpicks. The caterer is also the consumer of additional tangible personal property such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, electrical fixtures, as well as the labor to install and remove such items, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks. As the consumer, a caterer may not issue a resale certificate for the purchase or lease of such property used in connection with the serving of meals, food, or drinks because the caterer is the consumer of the property and, thus, neither sells nor rents such items to his or her customer irrespective of the method of billing. Rather, the sale or lease, unless the purchase of that leased property is excluded by Regulation 1660(b)(1)(E), of such property to a caterer is subject to sales or use tax.

(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.

1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of meals, food, or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.

2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.

(3) SALES BY CATERERS.

(A) Caterer as Retailer. Tax applies to the entire charge made by a caterers for the serving of meals, food, or drinks, inclusive of charges for food, the use of dishes, silverware, glasses, plasticware, paper products, chairs, tables, linens, champagne fountains, ice-sculptures, table décor, invitations, menus, etc., which are used in connection with serving meals, and for the labor of planning, preparing, and serving the meals, food, or drinks whether performed by the caterer, the caterer's employees, or subcontractors (e.g., bartenders, wait staff and cooks). Charges made by the caterer for items such as tents, canopies, subflooring, Astroturf, generators, air compressors, lighting, heating, electrical fixtures as well as the labor to install and remove such items, which provide the customer with a temporary sheltered place for the service of meals, food, or drinks, are included in the caterer's taxable gross receipts irrespective of the method of billing. Charges for hourly employees, associated with the furnishing of the meals, hired by a caterer are included in the caterer's gross receipts and subject to tax. Tax also applies to charges made by a caterer for preparing and serving meals, food, or drinks even though the food is not provided by the caterers, such as the cutting of a wedding cake or corkage fees associated with the opening of beverages. Tax applies to charges made by a person who is otherwise a caterer for hot prepared food products as in (e) above whether or not served by that person or caterer.

(B) Caterers as Lessors of Property Unrelated to the Serving or Furnishing of Meals, Food, or Drinks by a Caterer.

1. When a caterer who is furnishing or serving meals, food, or drinks also rents or leases from a third party tangible personal property which the caterer does not use himself or herself and the property is not customarily provided or used within the catering industry in connection with the furnishing and serving of food or drinks, such as decorative props related solely to optional entertainment, special lighting for guest speakers, sound or video systems, dance floors, stages, etc., he or she is a lessor of such property. In such instance, tax applies to the lease in accordance with Regulation 1660.

2. When a person who in other instances is a caterer does not furnish or serve any meals, food, or drinks to a customer, but rents or leases from a third party tangible personal property such as dishes, linen, silverware and glasses, etc., for purposes of providing it to his or her customer, he or she is not acting as a caterer within the meaning of this regulation, but solely as a lessor of tangible personal property. In such instances tax applies to the lease in accordance with Regulation 1660.

(C) Caterers Planning, Designing and Coordinating Events.

1. Tax applies to charges by a caterer for event planning, design, coordination, and/or supervision if they are made in connection with the furnishing of meals, food, or drinks for the event. Tax does not apply to separately stated charges for services unrelated to the furnishing and serving of meals, food, or drinks, such as optional entertainment or any staff who do not directly participate in the preparation, furnishing, or serving of meals, food, or drinks, e.g., coat-check clerks, parking attendants, security guards, etc.

2. When a caterer sells meals, food, or drinks, and the serving of them, to other persons such as event planners, party coordinators, or fundraisers, who buy and sell the same on their own account or for their own sake, it is a sale for resale for which the caterer may accept a resale certificate. However, a caterer may only claim the sale as a resale if the caterer obtains a resale certificate in compliance with Regulation 1668. A person is buying or selling for his or her own account, or own sake, when such person has his or her own contract with a customer to sell the meals, food, or drinks to the customer, and is not merely acting on behalf of the caterer.

(D) Sales of Meals by Caterers to Social Clubs, Fraternal Organizations. Sales of meals to social clubs and fraternal organizations, as those terms are defined in subdivision (i) below, by caterers are sales for resale if such social clubs and fraternal organizations are the retailers of the meals subject to tax under subdivision (i) and give valid resale certificates therefor.

(E) Tips, Gratuities, or Service Charges: An optional tip or gratuity is not subject to tax. A mandatory tip, gratuity, or service charge is included in taxable gross receipts. A tip, gratuity, or service charge negotiated in advance of an event between the caterer and the customer is mandatory even though the amount or percentage is negotiated. A tip, gratuity, or service charge itemized on an invoice or billing by a caterer is not optional even if the invoice or billing itemizes with a notation such as "optional gratuity." A gratuity is optional only if it is voluntarily added by the customer.

Examples of mandatory tips, gratuities, or service charges include:

"A 15% gratuity [or service charge] will be added to parties of 8 or more."

"Suggested gratuity 15%," itemized on the invoice or bill by the caterer.

Tips, gratuities, and service charges are further discussed in subdivision (g).

(4) PREMISES NOT SUPPLIED BY THE CUSTOMER.

(A) General. When a person serves meals, food, or drinks on premises not supplied by the customer, that person is not a caterer as defined in subdivision (h)(1), without regard to whether the premises supplied to the customer are owned or leased by that person for his or her own general use, or the premises are rented or leased by that person for the specific job. Except as provided in subdivisions (h)(4)(B), (C), and (D) below, when a person serves meals, food, or drinks on premises that the person supplies, the charges to the customer for the premises are part of the charges for the service of the meals, food, or drinks, and are included in the person's taxable gross receipts from the sale of meals, food, or drinks without regard to whether the charges are separately stated.

(B) Event's Primary Purpose Is Not Providing, Food, or Drinks. When a person serves food or drinks on premises that person supplies, charges for the premises are included in taxable gross receipts from the sale of the food or drinks, unless:

1. The premises are supplied for an event, such as an awards ceremony, press conference, concert, fundraiser, or dance, where the primary purpose of the event is other than the providing of food or drinks, and

2. The food or drinks provided at the event are solely drinks and/or hors d'oeuvres or appetizers.

If the above conditions are met, the charges to the customer for the premises are not taxable as part of the gross receipts from the sale of the food and/or drinks, but the charges for the food and/or drinks and related services are subject to tax.

(C) Meal, Food, or Drinks as an Incidental Part of Other Significant Uses of Premises by Customers.

1. Room in Hotels, Restaurants, Fraternal Lodges, and Similar Facilities. Charges by a restaurant, hotel, fraternal lodge, or a similar facility for the use of a room as part of the service of meals, food, or drinks are included in taxable gross receipts from the sale of the meals, food, or drinks. However, when daily room charges are made and meals, food, or drinks are served at some point during the day as an incidental part of other significant uses of the same room by the customer, such as business meetings, seminars, and similar functions, separately stated room charges are not taxable as part of the gross receipts from the sale of meals, food, or drinks, but the charges for the meals, food, or drinks and related services are subject to tax. If meals, food, or drinks are served in a different room from the room(s) used for the function, the charges for that room are included in taxable gross receipts from the sale of meals, food or drinks.

2. Other Premises. Charges for the use of premises other than those described in subdivision (h)(4)(C) 1., supplied by a person who also serves meals, food, or drinks thereon, are included in taxable gross receipts from the sale of meals, food, or drinks, unless all of the following conditions are met:

- a. The primary use of the premises on a daily basis is for other than the serving and eating of meals, food, or drinks;
- b. The premises may be rented without any meals, food, or drinks being provided;
- c. The charges for the premises are the same amount whether or not meals, food, or drinks are provided,
- d. The charges for the premises are separately stated in the contract; and
- e. The person's provision of meals, food, or drinks to the customer is only an incidental part of the customer's other significant uses of the premises.

Examples of premises where the meals, food, or drinks may be incidental to other significant uses of the premises by the customer include, but are not limited to, museums, amusement parks, permanent life-size replicas of neighborhood or city street scenes at theme parks and motion picture studios, circuses, aquariums, and zoos. However, if such premises are provided for only the amount of time sufficient for the serving and eating of the meals, food, or drinks, such use of the premises by the customer is not an incidental part of other significant uses and

the charges for the premises are part of the charges for the providing of meals, food, or drinks and, thus, are included in the taxable gross receipts from the sale of meals, food, or drinks.

(D) When Food Served During Transportation. When meals, food, or drinks are provided during transportation, such as on a vessel or bus, the usual charges for transportation are not taxable as part of the gross receipts from the sale of the meals, food, or drinks. However, if the premises on which the meals, food, or drinks are provided are not at that time being used to transport the persons to whom the meals, food, or drinks are being provided, such as a vessel that remains moored, the charges for the use of those premises in connection with the serving of meals, food, or drinks are included in taxable gross receipts from the sale of the meals, food, or drinks.

(5) PRIVATE CHEFS:

A private chef is generally not an employee of the customer, but an independent contractor who pays his or her own social security, federal and state income taxes. Such a private chef, who prepares and serves meals, food and drinks in the home of his or her customer is a caterer under this regulation.

~~—(G) Sales of meals by caterers to social clubs, fraternal organizations or other persons are sales for resale if such social clubs, fraternal organizations or other persons are the retailers of the meals subject to tax under (i) below and give valid resale certificates therefor.~~

(i) SOCIAL CLUBS AND FRATERNAL ORGANIZATIONS. “Social Clubs and Fraternal Organizations” as used herein include any corporation, partnership, association or group or combination acting as a unit, such as service clubs, lodges, and community, country, and athletic clubs.

The tax applies to receipts from the furnishing of meals, food, and drink by social clubs and fraternal organizations unless furnished: (1) exclusively to members; and also, (2) less frequently than once a week. Both these requirements must be met. If the club or organization furnishes meals, food or drink to nonmembers, all receipts from the furnishing of meals, food or drink are subject to tax whether furnished to members or nonmembers, including receipts on occasions when furnished exclusively to members. Meals, food or drink paid for by members are considered furnished to them even though consumed by guests who are not members.

(j) STUDENT MEALS.

(1) DEFINITIONS.

(A) “FOOD PRODUCTS”. As used herein, the term “food products” as defined in Regulation 1602 (18 CCR 1602) includes food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare or serve food to others.

(B) “MEALS”. As used herein, the term “meals” includes both food and nonfood products, which are sold to students for an established single price at a time set aside for meals. If a single price for the combination of a nonfood product and a food product is listed on a menu or on a sign, a single price has been established. The term “meals” does not include nonfood products which are sold to students for a separate price and tax applies to the sales of such products. Examples of nonfood products are: carbonated beverages and beer. For the purpose of this regulation, products sold at a time designated as a “nutrition break”, “recess”, or similar break, will not be considered “meals”.

(2) APPLICATION OF TAX.

(A) Sales by Schools, School Districts and Student Organizations. Sales of meals or food products for human consumption to students of a school by public or private schools, school districts, and student organizations, are exempt from tax, except as otherwise provided in (d)(4) above.

(B) Sales by Parent-Teacher Associations. Tax does not apply to the sale of, nor the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to the students of a school by parent-teacher associations. Parent-teacher associations qualifying under Regulation 1597 as consumers are not retailers of tangible personal property, which they sell. Accordingly, tax does apply to the sale to such associations of nonfood items such as carbonated beverages, containers, straws and napkins.

(C) Sales by Blind Vendors. Tax does not apply to the sale of meals or food products for human consumption to students of a school by any blind person (as defined in Section 19153 of the Welfare and Institutions Code) operating a restaurant or vending stand in an educational institution under article 5 of chapter 6 of part 2 of division 10 of the Welfare and Institutions Code, except as otherwise provided in (d)(4) above.

(D) Sales by Caterers. The application of tax to sales by caterers in general is explained in subdivision (h) above. However, tax does not apply to the sale by caterers of meals or food products for human consumption to students of a school, if all the following criteria are met:

- (1) The premises used by the caterer to serve the lunches to the students are used by the school for other purposes, such as sporting events and other school activities, during the remainder of the day;
- (2) The fixtures and equipment used by the caterer are owned and maintained by the school; and
- (3) The students purchasing the meals cannot distinguish the caterer from the employees of the school.

(k) EMPLOYEES' MEALS.

(1) **IN GENERAL.** Any employer or employee organization that is in the business of selling meals, e.g., a restaurant, hotel, club, or association, must include its receipts from the sales of meals to employees, along with its receipts from sales to other purchasers of meals, in the amount upon which it computes its sales tax liability. An employer or an employee organization selling meals only to employees becomes a retailer of meals and liable for sales tax upon its receipts from sales of meals if it sells meals to an average number of five or more employees during the calendar quarter.

(2) **SPECIFIC CHARGE.** The tax applies only if a specific charge is made to employees for the meals. Tax does not apply to cash paid an employee in lieu of meals. A specific charge is made for meals if:

- (A) Employee pays cash for meals consumed.
- (B) Value of meals is deducted from employee's wages.
- (C) Employee receives meals in lieu of cash to bring compensation up to legal minimum wage.
- (D) Employee has the option to receive cash for meals not consumed.

(3) **NO SPECIFIC CHARGE.** If ~~no specific charge is made by an employer~~ makes no specific charge for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals.

In the absence of any of the conditions under (k)(2) a specific charge is not made if:

- (A) A value is assigned to meals as a means of reporting the fair market value of employees' meals pursuant to state and federal laws or regulations or union contracts.
- (B) Employees who do not consume available meals have no recourse on their employer for additional cash wages.
- (C) Meals are generally available to employees, but the duties of certain employees exclude them from receiving the meals and are paid cash in lieu thereof.

(4) **MEALS CREDITED TOWARD MINIMUM WAGE.** If an employee receives meals in lieu of cash to bring his or her compensation up to the legal minimum wage, the amount by which the minimum wage exceeds the amount otherwise paid to the employee is includable in the employer's taxable gross receipts up to the value of the meals credited toward the minimum wage.

For example, if the minimum rate for an eight-hour day is \$46.00, and the employee received \$43.90 in cash, and a lunch is received which is credited toward the minimum wage in the maximum allowable amount of \$2.10, the employer has received gross receipts in the amount of \$2.10 for the lunch.

(5) **TAX REIMBURSEMENT.** If a separately stated amount for tax reimbursement is not added to the price of meals sold to employees for which a specific charge is made, the specific charge will be regarded as being a tax-included charge for the meals.

(l) RELIGIOUS ORGANIZATIONS. Tax does not apply to sales of meals and food products for human consumption furnished or served by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in furnishing or serving the meals and food products is to obtain revenue for the functions and activities of the organization and the revenue obtained from furnishing or serving the meals and food products is actually used in carrying on such functions and activities. For the purposes of this regulation, “religious organization” means any organization the property of which is exempt from taxation pursuant to subdivision (f) of Section 3 of Article XIII of the State Constitution.

(m) INSTITUTIONS. Tax does not apply to the sale of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients ~~or and~~ residents of an “institution” as defined in Regulation 1503. Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of the institution.

(n) MEAL PROGRAMS FOR LOW-INCOME ELDERLY PERSONS. Tax does not apply to the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to low-income elderly persons at or below cost by a nonprofit organization or governmental agency under a program funded by this state or the United States for such purposes.

(o) FOOD PRODUCTS, NONALCOHOLIC BEVERAGES AND OTHER TANGIBLE PERSONAL PROPERTY TRANSFERRED BY NONPROFIT YOUTH ORGANIZATIONS. See Regulation 1597 for application of tax on food products, nonalcoholic beverages and other tangible personal property transferred by nonprofit youth organizations.

(p) NONPROFIT PARENT-TEACHER ASSOCIATIONS. Nonprofit parent-teacher associations and equivalent organizations qualifying under Regulation 1597 are consumers and not retailers of tangible personal property, which they sell.

(q) MEALS AND FOOD PRODUCTS SERVED TO CONDOMINIUM RESIDENTS. Tax does not apply to the sale of and the storage, use, or other consumption in this state of meals and food products for human consumption furnished to and consumed by persons 62 years of age or older residing in a condominium and who own equal shares in a common kitchen facility; provided, that the meals and food products are served to such persons on a regular basis.

This exemption is applicable only to sales of meals and food products for human consumption prepared and served at the common kitchen facility of the condominium. Tax applies to sales to persons less than 62 years of age.

(r) **“FREE” MEALS.** When a restaurant agrees to furnish a “free” meal to a customer who purchases another meal and presents a coupon or card, which the customer previously had purchased directly from the restaurant or through a sales promotional agency having a contract with the restaurant to redeem the coupons or cards, the restaurant is regarded as selling two meals for the price of one, plus any additional compensation from the agency or from its own sales of coupons. Any such additional compensation is a part of its taxable gross receipts for the period in which the meals are served.

Tax applies only to the price of the paid meal plus any such additional compensation.

(s) **FOOD STAMP COUPONS.** Tax does not apply to tangible personal property, which is eligible to be purchased with federal food stamp coupons acquired pursuant to the Food Stamp Act of 1977 and so purchased. When payment is made in the form of both food stamps and cash, the amount of the food stamp coupons must be applied first to tangible personal property normally subject to the tax, e.g., nonalcoholic carbonated beverages. Retailers are prohibited from adding any amount designated as sales tax, use tax, or sales tax reimbursement to sales of tangible personal property purchased with food stamp coupons. (See paragraph (c) of Regulation 1602.5 for special reporting provisions by grocers.)

(t) **HONOR SYSTEM SNACK SALES.** An “honor system snack sale” means a system where customers take snacks from a box or tray and pay by depositing money in a container provided by the seller. Snacks sold through such a system may be subject to tax depending upon where the sale takes place. Sales of such snacks are taxable when sold at or near a lunchroom, break room, or other facility that provides tables and chairs, and it is contemplated that the food sold will normally be consumed at such facilities. Honor system snack sales do not include hotel room mini-bars or snack baskets.

¹The records acceptable in support of such a deduction are:

- (a) A sales ticket prepared for each transaction claimed as being tax exempt showing:
 - (1) Date of the sale,
 - (2) The kind of merchandise sold,
 - (3) The quantity of each kind of merchandise sold,
 - (4) The price of each kind of merchandise sold,
 - (5) The total price of merchandise sold,
 - (6) A statement to the effect that the merchandise purchased is not to be consumed on or near the location at which parking facilities are provided by the retailer, and
- (b) A daily sales record kept in sufficient detail to permit verification by audit that all gross receipts from sales have been accounted for and that all sales claimed as being tax exempt are included therein.

Appendix A

California Sales Tax Exemption Certificate
Supporting Exemption Under Section 6359.1

The undersigned certifies that it is an air carrier engaged in interstate or foreign commerce and that the hot prepared food products purchased from _____ will be consumed by passengers on its flights.

The undersigned further certifies that it understands and agrees that if the property purchased under this certificate is used by the purchaser for any purpose other than that specified above, the purchaser shall be liable for sales tax as if it were a retailer making a retail sale of the property at the time of such use, and the sales price of the property to it shall be deemed the gross receipts from such sale.

Date Certificate Given _____

Purchasing Air Carrier _____
(company name)

Address _____

Signed By _____
(signature of authorized person)

(print or type name)

Title _____
(owner, partner, purchasing agent, etc.)

Seller's Permit No.(if any) _____